133 Cong. Rec. S733-02, 1987 WL 928615 (Cong.Rec.)

Congressional Record —- Senate
Proceedings and Debates of the 100th Congress, First Session
Wednesday, January 14, 1987

WATER QUALITY ACT OF 1987

Mr. BYRD. Mr. President, under the agreement that was entered on yesterday, the majority leader was authorized to call up the House bill on clean water at any time today, following the conclusion of routine morning business, after consultation with the Republican leader, and make that bill the pending business before the Senate.

The majority leader and the minority leader have consulted, and therefore I exercise the authority under the order and ask that the Chair lay before the Senate the House bill on clean water.

The ACTING PRESIDENT pro tempore. The clerk will now report H.R. 1.

The legislative clerk read as follows:

A bill (H.R. 1) to amend the Federal Water Pollution Control Act to provide for the renewal of the quality of the Nation's waters, and for other purposes.

The Senate proceeded to consider the bill.

The ACTING PRESIDENT pro tempore. The Senator from North Dakota is recognized.

Mr. BURDICK. Mr. President, I rise in strong support of the Water Quality Act of 1987. In a moment I will yield to Senator MITCHELL, chairman of the Subcommittee on Environmental Protection, who I have asked to be the floor manager of this bill. But before I do so, I want to briefly discuss why the passage of this bill is so important and so timely.

H.R. 1 is historic legislation that will expand and strengthen the Clean Water Act. This bill has been over 3 years in the making. It has been through the hearing process in two Congresses. We held extensive markups in the Environment and Public Works Committee. The bill passed the Senate and was considered in a lengthy conference with the House. H.R. 1 before us today, like its counterpart S. 1, is identical to the bill approved by the House/Senate conference committee and passed unanimously in both houses of Congress last year. The legislative history for that bill, S. 1128, from its committee report to its conference report, is the legislative history of H.R. 1.

If it were not for the President's unfortunate action in pocket vetoing this bill late last year, this exact bill would already be law.

I want to commend my colleagues on the Environment and Public Works Committee for their excellent work in the development of this legislation.

My predecessor as chairman of the committee, the distinguished Senator from Vermont, guided the committee through development of this and other vital environmental legislation over the past several years.

Senators BENTSEN and MITCHELL, during the last Congress the ranking minority members of the full committee and the Subcommittee on Environmental Pollution respectively, made tremendous contributions to this Clean Water Act reauthorization.

And I want to specifically congratulate Senator CHAFEE. He is the architect of this legislation. He chaired the hearings we held on clean water in the Environment Committee. He managed the bill on the Senate floor. And he spoke for the Senate conferees during the long and intense conference with the House on this legislation. The

high quality of this legislation is largely due to his efforts.

Since its passage in 1972, the Clean Water Act has brought about a remarkable improvement in the quality of our rivers, lakes, streams, and marine waters.

A recent study of water quality conditions concluded that, between 1972 and 1982, the percentage of monitored stream miles considered clean rose from 36 to 64 percent. This represents the cleanup of roughly 47,000 miles of streams at a time when population rose by about 10 percent. We can point to similar success in cleanup of lakes and estuaries.

We have ample evidence that the Clean Water Act works. But we also have evidence that there is still a great deal of cleanup work to be done.

About 30 percent of the rivers most used for recreation and other purposes do not meet the standards we have set for them. Almost 15 percent of our most used lakes are polluted. There is evidence of serious water pollution problems in our marine bays and estuaries.

This legislation is designed to keep us moving forward in our drive to clean up our waters. It improves a number of the existing programs in the act. And, it provides new approaches to address emerging water pollution problems.

The changes to existing programs are necessary and appropriate, but the real heart of our bill are the new provisions addressing emerging problems.

The 1977 amendments to the Clean Water Act provided a major reorientation of the best available technology requirements to the control of toxic pollutants. Now we have discovered that even with the implementation of best available technology, many waters will still have serious problems of contamination with toxic pollutants. In this legislation we have developed a new program for identification of waters affected by toxic pollutants and implementation of specific controls to reduce these toxics. This will involve the adoption of numerical water quality criteria, and the development of effluent limitations to assure that water quality standards for toxic pollutants are attained.

We have developed a new program for management of nonpoint sources of pollution, such as general runoff. Nonpoint pollution is thought to cause over half of our remaining water quality problems. The bill authorizes $400 million to encourage the development of State nonpoint source management efforts.

We have developed a new program for protection of marine waters and estuaries which is based on our experience dealing with the problems of the Chesapeake Bay.

And, we have designed a new approach to assisting communities in construction of sewage treatment plants. We will continue to provide grants for several years, but will then provide Federal funds to capitalize State revolving loan funds. States will use these loan funds as a permanent resource for assisting in the financing of water quality projects. The Federal grant program will have been phased out, but sewage treatment plant construction and replacement can continue.

Let me mention just a few of the improvements to existing provisions of the Clean Water Act.

Our bill would tighten existing civil and criminal penalty provisions of the act.

It provides an improved and less burdensome process for control of discharges of stormwater, particularly for municipalities.

It provides for better monitoring and reporting of the quality of our lakes, with a demonstration program for putting lake cleanup techniques into place.

It assures that modifications of permit requirements for toxic or nonconventional pollutants will be handled only in accordance with strict new legislative guidance.

It limits circumstances in which effluent limitations achieved in permits can be weakened in subsequently issued permits.

And, it tightens provisions for waivers from secondary treatment for discharges of sewage to marine waters.

Mr. President, This is good, solid legislation, developed over a period of years by the Environment Committee and our colleagues in the House of Representatives. It has the support of the full range of industry and environmental groups.

This legislation responds to the desire of the American people for clean water and a safe environment.

I hope that evey one of my colleagues will join me in voting for this bill.

(Mr. BREAUX assumed the chair.)

Mr. MITCHELL. Mr. President, I rise in support of H.R. 1, the Water Quality Act of 1987.

This legislation will extend and strengthen one of our most fundamental environmental protection laws-the Clear Water Act.

Over the past several months, we have heard and read a great deal about the many specific provisions of this bill. I would like to take a moment to step back and look at the big picture.

This bill deserves the support of every one of my colleagues in the Senate for at least three reasons.

It is bipartisan legislation; it is necessary legislation; and it has the overwhelming support of the American people.

Let me review the exceptional, bipartisan support for this legislation.

During the last Congress, the leadership and members of the Environment and Public Works Committee worked together to draft a balanced, responsible bill addressing our most pressing water quality problems. I was pleased to work with Senator CHAFEE, who was then chairman of the subcommittee of jurisdiction; Senator STAFFORD, who was then chairman of the full committee; Senator BENTSEN, who was then the ranking member of the full committee; and Senator BURDICK, who is now the chairman of the committee. Together we brought a fine bill to the full Senate, which approved it unanimously.

Senator CHAFEE served as chairman of the Senate conferees for the conference with the House. More than any other individual, he deserves credit for this legislation. Senator CHAFEE'S diligence, his innovativeness, his commitment to protecting the American environment made this bill possible.

Under Senator CHAFEE'S leadership, the conference adopted the more reasonable Senate approach to funding of sewage treatment projects and adopted the best of the regulatory improvements contained in both bills. Again, this effort was so successful that both the House and the Senate adopted the conference report unanimously.

Even after the President's unfortunate veto of the bill, bipartisan support remained firm. The House of Representatives recently approved a bill identical to the one before us today by a vote of 406 to 8.

In the Senate, the majority leader and the new chairman of the Environment and Public Works Committee, Senator BURDICK, have worked hard to bring the bill to the floor and assure its passage. And, Senators CHAFEE and STAFFORD have joined us in this effort, along with many other Senators-77 in all-who cosponsored the bill.

Part of the reason the bill has such broad support in Congress is that it is recognized as sound legislation addressing some of our most pressing water pollution problems.

I will later in the debate speak in great detail about many of the important provisions in the bill. I will at this point briefly comment on some of the key provisions.

The bill provides a new approach to control of toxic pollutants in water. Although the current law provides general authority for toxics control, this legislation initiates a specific process designed to identify and control these toxic substances.

The legislation requires States to identify waters that do not meet water quality standards due to the discharge of toxic pollutants; to adopt numerical criteria for the pollutants in such waters; and to establish effluent limitations for individual discharges to such water bodies.

This provision is an important addition to our ability to protect water quality and public health from increasing amounts of toxic chemicals.

Another key element of the bill provides for State programs to identify and control nonpoint source pollution. Nonpoint pollution is caused by general runoff, rather than discharge from a specific pipe. These nonpoint sources of pollution are thought to cause over half of our remaining water pollution problems.

States will identify waters affected by nonpoint sources of pollution and develop programs to implement best management practices for controlling this pollution. State programs will include a schedule for implementation and will be coordinated with related Federal projects.

Finally, the bill gives State and local governments a clear statement of future Federal involvement in treatment plant financing and allows them to finalize plans to meet the compliance deadlines established in the law. It provides for a transition from the current grant program to a program providing Federal support for State revolving loan funds.

Establishment of loan funds will provide States with a permanent resource for funding of sewage treatment and other water quality related projects.

The final reason to support the bill is it has the overwhelming support of the American people.

A wide range of industry and environmental groups support the bill. And, polls show that the public favors continued effort to improve water quality by large margins. Final enactment of this legislation is an important step toward carrying out this mandate.

The only argument advanced against this bill has been advanced by the President, who says that it is too costly; that we cannot afford it. This bill calls for the expenditure of $18 billion over 9 years to clean up America's waters. In the budget he recently proposed to the Congress, the President asks for an increase of $1.7 billion in foreign aid, which would raise that expenditure to a new record level of nearly $15 billion.

Thus, President Reagan proposes to devote nearly $15 billion in 1 year to foreign aid, while Congress proposes to spend $18 billion over 9 years to clean up America's waters.

How can the President, or anybody else, say that we cannot afford to keep America's waters clean, while at the same time proposing a multibillion dollar increase in foreign aid, proposing to spend in 1 year on foreign aid nearly as much as the Congress wants to spend in 9 years to clean up America's waters?

I do not believe that those are the right priorities for our America. I do not believe the American people share the President's priorities on this issue. They want clean water. They favor this bill overwhelmingly.

In conclusion, Mr. President, I hope that every one of my colleagues will support this bill. There are very few opportunities to vote for substantive legislation which has broad, bipartisan support, which is recognized as sound, thoughtful legislation, and which is supported overwhelmingly by the American people.

This is a winning combination which deserves the unanimous support of the Senate.

I would like to note that this bill is virtually identical to the bill approved last year by both Houses of Congress. The legislative history of this bill, therefore, includes the conference report (House Report 99-1004), and the Senate debate on the conference report, as well as the report of the Environment Committee on the committee bill, S. 1128, and the Senate debate on the committee bill.

Mr. President, I ask unanimous consent that the following staff members be accorded privileges of the floor during debate and all votes related to consideration of the Water Quality Act.

They are: Lee Fuller, Peter Prowitt, Phil Cummings, Jeff Peterson, Kate Kimball, Nan Stockholm, Ron Cooper, Seth Mones, Kathy Cudlipp, Bob Hurley, Bailey Guard, Ron Outen, Jimmie Powell, Steve Shimberg, and Elizabeth Thompson.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MITCHELL. Mr. President, I yield to my distinguished colleague, Senator CHAFEE, who as I said in my earlier remarks is the individual most responsible for the drafting and enactment of this legislation in the last Congress. He devoted nearly 2 years to this effort. The American people owe him a great debt of gratitude for his leadership.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, first I would like to thank my distinguished colleague, Senator MITCHELL, for those very kind remarks and also thank the distinguished chairman of our committee, Senator BURDICK, for his generous comments on my work in connection with this legislation.

Let me just say to start with, Mr. President, that for the efforts of Senator MITCHELL in the subcommittee where he and I worked so closely together and then when we moved to the full committee where the results of our work were pressed ahead by not only Senator MITCHELL, but Senator STAFFORD, Senator BENTSEN, and Senator BURDICK, and thus we emerged from the committee with a unanimous vote, came to the floor, and with the vigorous support of those Senators; namely, Senator MITCHELL, Senator BURDICK, Senator BENTSEN, and Senator STAFFORD, we were able to achieve an overwhelming vote here on the floor of the Senate with our original legislation.

Then we went to conference, and again the help of those Senators was so essential to the approval of this legislation. I will touch briefly as I proceed here on the differences between the two bills when we went to conference, and what we came out with.

What we are dealing with, of course, is the bill before us, H.R. 1, which, as has been mentioned, is absolutely identical to the conference report on S. 1128, which passed last October in this Senate by a vote of 96 to nothing and which was passed by the House 408 to nothing. It is pretty hard to get anything passed 408 to nothing in the House and 96 to nothing in the Senate. Possibly a motherhood resolution, but not much else will pass with those overwhelming margins.

That is a tribute to the confidence which the Members of this Congress have in this legislation. The original bill passed the Senate in June 1985 and the House bill shortly thereafter. Then we had some 15 months of conference or preconference developments. Out of that we were able to fashion this compromise. As Senators BURDICK and MITCHELL so generously commented I had the privilege of being the leader of the Senate conferees at that conference with the House. I can tell my colleagues that this is strong environmental legislation. I can also say it is fiscally responsible. Let us touch a minute on the construction grants.

The House originally passed a bill of $21 billion on construction grants, and about $6 billion in special projects and programs making a total of almost $27 billion. The Senate bill was a little less than $20 billion. We had $18 billion for construction grants, and $1.5 billion-plus for other programs. We went to conference. Here we come with the Senate bill which is little less than $20 billion, the House with $27 billion, and from the conference we emerged with a bill for a total package of $20.7 billion. In other words, it was just about at the Senate figure, and $6.2 billion below the House figure.

Despite the pleas of many of us, despite the fact that there was this overwhelming vote in both bodies on the conference report, the President chose to pocket veto the legislation. That decision came as a big disappointment to me. I had made strenuous efforts as did many others to encourage and urge the President to sign the legislation because we could see what was going to happen. We could see the scenario play out exactly as it has. I made a pledge at the time that we would come back with the same bill. So did Senator MITCHELL, Senator BENTSEN, Senator BURDICK, and others, and of course Senator STAFFORD, who also strongly urged the President to sign the measure.

So here we are. The bill is exactly the same as was passed in the conference. It has already passed the House, is now in the Senate, and will soon be passed here.

Failure to enact this legislation will seriously delay the cleanup of our rivers and streams. And it will jeopardize hundreds of projects across the Nation including many in my home State of Rhode Island.

It has been charged that this legislation is budget busting. That is simply not the case. Although $18 billion authorized in the bill for wastewater treatment projects exceeds the administration's request, it is within current

funding levels and it conforms to the budget resolution. No one is dismissing $18 billion as being a petty amount of money. It is a substantial amount of money. But it is a small sum compared to the more than $75 billion that it is estimated by EPA to be required to build all the facilities that are necessary to clean up our waters. So we are coming forward not with $75 billion but with $18 billion, and, furthermore, this program ends. It is over with in 1993. That is something that the administration has sought so vigorously, and we have come forward and have done that.

I would also like to remind my colleagues of a commitment that we had from the administration in 1981 when this administration came to office. At that time, we went through some major reforms in the construction grants program. Just listen to some of them.

The 1981 amendments reduced the annual authorization for this program by more than half, from $5 billion to $2.4 billion a year. That is one thing we did. We cut out many of the eligible categories such as collector sewers. They are out. They are not permitted any more. We eliminate certain interceptor sewers. We do not provide funding for them, and we do not provide funding for certain combined sewer overflows. Furthermore, in a very major step we only provided Federal money for existing population. No State can come in to us and say we are projected to grow by 40 percent in the next 10 years, give us Federal money for that. No.

You ought to provide for that yourself. We will give you money now to clean up our rivers and streams and you are required to come up with the additional money as your growth takes place. It is not the Federal Government's duty to provide money to you for all your growth in the future.

Our goal in 1981 was to cut out any so-called pork out of the program and change the focus from growth and development projects to building facilities to clean up our waters.

What did we get in exchange? I might say this was a bitter pill for many people to swallow, but we did it, in very intense negotiations with the House of Representatives in the conference that we held at that time which I had the privilege to be chairman of.

In exchange for tightening up the program and reducing the authorization, the administration committed itself to a funding level of $2.4 billion each year for 10 years, from 1981 to 1991. This legislation lives up to that commitment, and I might say goes a step further. It phases out a very popular program after 1994. Yet we do it in a highly responsible way.

The Water Quality Act of 1987, this bill, assures compliance with a strong water quality standards program and provides for greater control over toxic, conventional, and nonconventional pollutants, as our distinguished chairman previously mentioned. It establishes a new program to control pollution from nonpoint sources, as Senator MITCHELL touched upon. Nonpoint sources, as he said, is rain which washes off from city streets, or flows off of agricultural fields and is contaminated with pesticides and insecticides. It is different from point sources, such as a discharge from a municipality or a factory.

And, as I mentioned, H.R. 1 continues funding of waste water treatment works at the $2.4 billion level annually through fiscal 1991. Thereafter, it gets into the establishments of a revolving fund to ease the transition to full State and local sufficiency.

I would like to take a few moments to touch on some of the key provisions of the bill. For a more complete explanation, I ask my colleagues to refer to last year's debate when we had this program come up, and the conference report accompanying S. 1128, which was the number of the bill last year.

The legislation strengthens several regulatory programs. One such program relates to nonconventional pollutants.

Under current law, modifications can be sought from strong discharge requirements for so-called nonconventional pollutants, many of which, as Senator BURDICK mentioned before, are highly toxic. In an effort to severely limit the circumstances in which these weaker modifications can be given, the conference report allows these modifications only for five specific pollutants. If other pollutants are to be listed for modification, EPA has

to go through a special procedure. This procedure requires the Administrator to first determine whether a pollutant meets the criteria of toxic pollutant.

If it does, then the pollutant must be listed as toxic from which no variance can be received. If the pollutant is not found to be toxic, the Administrator must then determine whether it can be listed under section 301(g) as a nonconventional pollutant. If it meets that test, the Administrator must finally determine whether an applicant applying for a modification from the effluent guideline for that particular pollutant can meet the test contained in section 301(g). It is expected that each of these steps be conducted through the formal regulatory process. It is also important to note that a stay of requirements for control of pollutants other than the nonconventional pollutant for which the modification is being sought is prohibited.

The legislation also contains provisions which severely limits the opportunities for which discharges can get modifications for fundamentally different factors. A key provision under the fundamentally different factors section specifically excludes consideration of costs, independent of other eligible factors, as a basis for establishing a fundamental difference with regard to an individual facility. Section 304 of the Clean Water Act authorizes the EPA to consider the cost of achieving effluent reductions, in addition to other factors, in development of a guideline for an entire industry. The EPA needs to consider cost when developing a guideline for an industry in order to determine the best available technology for water pollution control which is economically achievable for an entire industry.

While a guideline is intended to account for economic impact on an entire industry, it is not intended to account for the economic impact on each individual facility. The 1972 Clean Water Act Conference Report stressed this point, directing EPA to make the determination of the economic impact of an effluent limitation on the basis of classes and categories of point sources, as distinguished from a plant-by-plant determination. If a facility facing higher costs than the overall industry is allowed to reduce costs then the overall industry is allowed to reduce treatment levels below the minimum level, the degree of pollution control at a facility is linked to the economic efficiency of the facility, rather than the economic ability of the industry, and the principle of an industrywide minimum level of treatment loses its meaning.

Although the act does not and should not provide a mechanism to modify the requirements of an effluent guideline on the basis of fundamentally different costs at an individual facility, section 301(c) of the act provides for modification of requirements in a case where such requirements are beyond the economic capability of the owner. Section 301(c) does not allow the Administrator to modify treatment requirements based on a showing of fundamentally different costs to an individual facility, unless these costs are beyond the economic capability of the facility and, therefore, threaten its survival. In addition, section 301(c) is subject to section 301(1), which prohibits the Administrator from modifying any requirement as it applies to a toxic pollutant. This provision assures that toxic pollutants will be controlled, regardless of the economic capability of the discharger. The new authority for treatment modifications based on fundamentally different factors contained in the bill is not subject to section 301(1).

Section 301(n)(6) provides that an application for an alternative requirement under this section shall not stay the facility's obligation to comply with the effluent limitation guideline or standard which is the subject of the application. This provision is intended to prevent EPA or the State, or the POTW in the case of indirect discharge, from delaying issuance of the permit or pretreatment mechanism during the pendency of an application.

The owner or operator of a facility seeking an FDF modification has the burden of proving to the satisfaction of the Administrator that the facility is eligible for an alternative requirement under this section. The Administrator's decision to promulgate or deny an alternative effluent limitation or standard under this subsection shall be subject to judicial review pursuant to section 509(b)(1) of the act.

The Administrator may not delegate the authority provided by this subsection to any State. In addition, the authority of this section should be exercised only by the Administrator or Assistant Administrator for Water, rather

than regional or other officials. The Administrator shall obtain the concurrence of a State before approving any alternative requirements under this subsection.

The bill also contains provisions continuing the Chesapeake Bay program; it establishes a Great Lakes water quality program and sets up a new national estuary program which provides that management conferences develop control strategies to assist in the clean up of estuaries. This is especially important to the Narragansett Bay in my State of Rhode Island which suffers from degradation of water quality.

Before I finish about the Chesapeake Bay, we are making great progress in that bay. We have had extraordinary cooperation from the States involved-Maryland, Virginia, and Pennsylvania. It is just an example of what can be done with some Federal input.

Funds in this bill are also set aside for correction of combined sewer overflows which can cause serious pollution in our State's more precious natural resource, the Narragansett Bay, and other estuaries around the Nation.

As Senator MITCHELL pointed out, a new nonpoint source control program is included in the legislation. The program would authorize $400 million over 4 years for States to develop comprehensive programs to abate such pollution runoff from urban areas and from farmlands which are often contaminated with toxic and other pollutants.

I might say this is a major step forward. People have discussed nonpoint pollution for a long time. But we have not gotten into it for a variety of reasons. One of them is the fear of local communities and the States that for some reason we might be getting into zoning control in those areas. How are you going to keep a field from draining off into a stream? How are you going to control that? Is the Federal Government stepping in to say to a farmer he cannot do this or do that?

So we are moving cautiously with $400 million over 4 years for the States to develop the programs, not the Federal Government, but the States.

This legislation also beefs up the enforcement provisions of the act by increasing penalties for civil and criminal violations. It adds a new authority for the Administrator to assess administrative penalties against unpermitted discharges. The Administrator can do that, assess the penalties on violators.

EPA has new authority to assess penalties against the unpermitted discharges. I expect EPA to use this authority aggressively against illegal polluters, even if a memorandum of agreement is not concluded with the Secretary of the Army.

The corps enforcement record-and the Corps of Engineers is involved in this-shows the corps has not been vigorous enough against illegal dumpers. Now we have given EPA the authority to move against these polluters.

New paragraph 309(g)(6) sets out limitations that preclude citizen suits where the Federal Government or a State has commenced and is diligently prosecuting an administrative civil penalty action or has already issued a final administrative civil penalty order not subject to further review and the violator has paid the penalty. The same provision limits Federal civil penalty actions under subsections 309(d) and 311(b) for any violation of the Federal Water Pollution Control Act. While redundant enforcement activity is to be avoided and State action to remedy a violation of Federal law is to be encouraged, the limitation on Federal civil penalty actions clearly applies only in cases where the State in question has been authorized under section 402 to implement the relevant permit program.

A single discharge may be a violation of both State and Federal law and a State is entitled to enforce its own law. However, only if a State has received authorization under section 402 to implement a particular permitting program can it prosecute a violation of Federal law. Thus, even if a nonauthorized State takes action under State law against a person who is responsible for a discharge which also constitutes a violation of the Federal permit, the State action cannot be addressed to the Federal violation, for the State has no authority over the Federal permit limitation or condition in question. In such case, the authority to seek civil penalties for violation of the Federal law under subsections 309(d) or 311(b) or section 505 would be unaffected by the State action, notwith-

standing paragraph 309(g)(6).

In addition, the limitation of 309(g)(6) applies only where a State is proceeding under a State law that is comparable to section 309(g). For example, in order to be comparable, a State law must provide for a right to a hearing and for public notice and participation procedures similar to those set forth in section 309(g); it must include analogous penalty assessment factors and judicial review standards; and it must include provisions that are analogous to the other elements of section 309(g).

Finally, section 309(g)(6)(A) provides that violations with respect to which a Federal or State administrative penalty action is being diligently prosecuted or previously concluded ”shall not be the subject of” civil penalty actions under sections 309(d), 311(b), or 505. This language is not intended to lead to the disruption of any Federal judicial penalty action then underway, but merely indicates that a Federal judicial civil penalty action or a citizen suit is not to be commenced if an administrative penalty proceeding is already underway.

NOTICE OF CONSENT DECREES

This bill requires that, in connection with citizen suits, notification of proposed consent decrees be provided to the Attorney General and to the Administrator.

It was originally proposed in the Administration's bill 2 years ago. The Administration bill contained a clause which specifically disclaimed that the United States could be bound by judgments in cases to which it is not a party.

That provision merely restated current law and thus we decided that it is not necessary to include it in this bill. The amendment is not intended to change existing law that the United States is not bound, since that rule of law is necessary to protect the public against abusive, collusive, or inadequate settlements, and to maintain the ability of the Government to set its own enforcement priorities.

Compliance dates for industries for which effluent guidelines have not been promulgated have been extended to March 1989.

We have had a big problem over when you have to come into compliance because of the guidelines. EPA has not been quick enough to come out and tell industry A or industry F what they can and cannot do. So we have reluctantly given them an extension on these guidelines. The latest is March 1989, or 3 years from the date of promulgation of the guidelines by EPA, whichever is sooner. EPA is strongly encouraged to get these guidelines finalized so industry can comply with the discharge requirements as soon as possible. Until such guidelines are promulgated, the Agency is expected to proceed under its current policy with respect to noncompliance dischargers to meet the deadline.

A provision establishing a progressive storm water control program is included in the bill. Although the law now requires EPA to establish discharge requirements for the storm water point sources, EPA has been unable to develop a final permit program for these sources. This legislation sets up a program whereby EPA must issue permits for storm water point source discharges in municipalities with population of over a quarter million within 4 years of enactment.

Within 5 years of enactment, permits for storm water point sources discharges are required in cities with populations between 100,000 and 250,000. These discharge requirements are to contain control technology or other techniques to control these discharges and should conform to water quality requirements. Requirements for storm water discharges associated with industrial activities are unaffected by this provision. The Agency has been unable to move forward with a program, because the current law did not give enough guidance to the Agency. This provision provides such guidance, and I expect EPA to move rapidly to implement this control program.

The legislation also contains the Senate provision relating to the Chicago tunnel and reservoir project. This is

something that has been around for many, many years. This provision only allows funding for this project under section 201(g)(1) without regard to the limitation contained in the provision if the Administrator determines that such projects meets the cost-effective requirements of section 217 and 218 of the act without any redesign or reconstruction. The Governor of Illinois must demonstrate to the satisfaction of the Administrator the water quality benefits of the project. This provision does not apply to the cost-sharing requirements under the other applicable provisions of the bill.

The legislation modifies EPA's current policy with respect to antibacksrliding on best practical judgment and water quality-based permits. The thrust of this provision is to generally prohibit affected permittees from weakening their discharge requirements as a result of subsequently promulgated guidelines. Only in very narrow circumstances can backsliding be permitted, and in no event can it be permitted even if, after a discharger leaves a stream, there is an improvement in water quality, unless the antidegradation policy test is met. That test states that water quality may be lowered only if widespread adverse social and economic consequences can be demonstrated through a full intergovernmental review process.

S. 1 also embodies many of the construction grants and revolving loan fund proposals contained in the bill first passed by the Senate in 1985. In other words, this bill was passed, as I mentioned earlier, in 1985; we went to conference with the House, but we kept many of the provisions dealing with the construction grants and the revolving loan.

The bill extends the current $2.4 billion annual authorization for title II construction grants for 3 years. In fiscal years 1989 and 1990, the annual authorization for title II would be reduced to $1.2 billion. After that, there is no more; no further authorizations would be made for title II after fiscal year 1990, and the money is shifted over into the revolving grants program.

States would be provided with sufficient lead time to begin setting up State revolving loan programs. The bill encourages the creation of these self-sustaining financing entities at the earliest opportunity by providing each State with an option of converting title II construction grants funds into capitalization grants for SRF's.

Beginning in fiscal year 1989 and continuing in fiscal year 1990, $1.2 billion a year would be authorized specifically for capitalizing SRF's under the new title VI. In fiscal year 1991, the amount would be increased to $2.4 billion. Thereafter, the SRF authorization would gradually be reduced by providing $1.8 billion in fiscal year 1992, $1.2 billion in fiscal year 1993, and $600 million in fiscal year 1994. After fiscal year 1994, all authorizations for direct Federal contributions to municipal wastewater treatment or SRF's would be ended.

Tabular, graphic, or textual material set at this point is not displayable.

The total authorizations for titles II and VI amount to $18 billion and will ensure that the core treatment-related needs identified in the 1981 amendments will be met.

This approach lives up to the commitment made by Congress and the administration to support an annual appropriation of $2.4 billion over the 10-year period of 1981 through 1991 to meet the needs for construction of wastewater treatment facilities. That commitment was restated by then-EPA Administrator William Ruckelshaus at a budget hearing before the Environment and Public Works Committee in 1984. His statement is as follows:

I think that while there may be some at OMB who would prefer not to see this kind of program continue, I have not run in personally to those people at OMB, and there is an understanding that there is an agreement with the Administration and with the Congress that for 10 years this level of funding, at least, is a commitment. If you will note, the difference between what we submitted to the President in terms of our budget and what we are now requesting is somewhat less. We went down to $2.4 billion as a result of that commitment. That was something the Administration put back into our budget over our submission.

A slight change in the allotment formula for grants to the States is contained in the bill.

The revolving loan fund embodied in this legislation presents a great opportunity for the States to eventually assume full responsibility for construction of wastewater treatment facilities in their jurisdictions.

States must first use the funds in the loan fund on projects needed to meet the 1988 municipal deadline requirement for secondary treatment. After that requirement is satisfied, loan funds may also be spent on activities eligible under the Nonpoint Pollution Program and the National Estuary Program.

In an effort to encourage cities to move forward with construction of treatment facilities to meet the 1988 deadline, the legislation allows for refinancing under the loan program of projects which were begun after March 7, 1985. Although these projects should be on the State priority list to be eligible for refinancing, prior agreements between the State and the municipality should be honored in the event the project is no longer on the priority list.

Mr. President, I would like to conclude by saying passage of this legislation gives us an opportunity to renew our commitment to the national goal of making all of our waters fishable and swimmable.

That was the goal we started out with when we started this legislation back in the early 1970's.

The Water Quality Act of 1987-this bill-strengthens the existing provisions of the Clean Water Act and establishes new cleanup programs which will greatly enable us to address a new generation of subtle-and more devastating-problems posed by toxic pollution, storm water discharges, nonpoint pollution and contamination of sludges.

As I said earlier, a few months ago, the Senate passed this clean water bill by a vote of 96 to 0. I hope my colleagues will again give this legislation the same resounding show of support and vote ”yes” to continue the job of cleaning up our Nation's waters.

This bill is within the agreed-upon authorization level of $2.4 billion for wastewater treatment facilities passed by the Senate and contained in the budget resolution. It provides for the orderly phaseout of the construction grants program. And most importantly, it gives the American people what has been reflected in public opinion polls conducted across the land as cited by the distinguished Senator from Maine <Mr. MITCHELL> previously-that they want clean water.

Once again, let me say how much I do appreciate the support and work of the chairman of our full committee, Mr. BURDICK; of course, of Senator STAFFORD, who has been such a tower of strength in these matters right from the beginning; of Senator MITCHELL, the new chairman of the Environmental Pollution Subcommittee, for everything he has done ever since he has been in the Senate. He has been a real leader in environmental matters and the Nation owes him a debt of gratitude.

I thank Senator BENTSEN, who has worked so hard in this matter and was a key man in the conference we held last fall; and all the other members of the Environment and Public Works Committee who have taken such an interest in this legislation.

Finally, I wish to thank the staff: Phil Cummings, Bob Hurley, Jeff Peterson, Ron Outen, Steve Shimberg, Jimmie Powell, Cathy Cudlipp and so many others. It is dangerous for me to get into naming them, but each of them has worked very, very hard on this legislation. As one member of the committee and as has been previously stated by other speakers, we are very much indebted to them for what they have done.

I thank the Chair.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Louisiana is recognized.

Mr. BREAUX. Mr. President, as a new Member of the Senate, let me say this bill is like the legislation that I supported as a Member of the other body. The House passed that bill, which is identical to this one.

I, too, want to thank the distinguished chairman of the Senate Environment and Public Works Committee, the Senator from North Dakota <Mr. BURDICK>, and also the Senator from Rhode Island <Mr. CHAFEE> for their consideration, help, and assistance to allow the junior Senator from Louisiana to be involved in developing this legislation.

I echo the comments of the Senator from Maine <Mr. MITCHELL>, the distinguished chairman of the subcommittee, when he spoke of the priorities in assessing the limited amount of funds that we have as a nation. Clean water is also part of the national security of our country.

I ask the question, how much is clean water worth? How much is the knowledge that the water we drink out of a river or the water that we drink from a stream or from a lake does not contain toxic chemicals that are carcinogenic? I think that is also a part of the national security of the United States.

I take the limited time I have right now to point to merely one concern that I and, I know, the senior Senator from Louisiana <Mr. JOHNSTON> particularly have concerning some of the features of the bill before the Senate at this time. Language was added to the Senate and the House bill last year that affected basically four companies who sought to discharge a particular product into the Mississippi River. The permit applications were pending for something like over a decade and no resolution to those permits from the Environmental Protection Agency had ever been resolved. Language was added to the bill which was also included in the bill before the Senate and has already been adopted by the House that seems to require that a permit shall be issued. It is the intent of this Senator at an appropriate time to offer a concurrent resolution which would clarify the intent of that language.

The concurrent resolution will point out in the language in the bill in section 306(c) that requires a permit to be issued within 180 days, that those permits must comply with applicable standards and procedures for the issuance of the best professional judgment permits under section 402(a)(1)(b) of the act. The intent of our concurrent resolution will be to point out clearly that section 306(c) of the bill does not in any way require the Administrator of EPA to permit the discharge of gypsum or gypsum waste into the Mississippi River; nor does it affect the authority of the State of Louisiana to deny or condition certification under section 401 of the act with respect to these particular permits; nor does that section alter the right of a party to challenge the permits using established administrative and judicial appeals.

I think, Mr. President, the real intent was to get some final resolution of these permits. It is inappropriate, I think everyone can agree, that when companies seek permits, the application should be dragged on for years and years and even decades without some final resolution to the permits-either grant the permits, deny the permits, or grant the permits with modification.

But do not kill the process by delay. That was the intent of the sections that were added to the bill in the last Congress which are carried over into this Congress and contained in this bill. I think the concurrent resolution which the chairman has allowed us to offer will clarify that particular intent of the section. I thank the distinguished members of the committee and we will proceed at the appropriate time.

The PRESIDING OFFICER (Mr. BREAUX). The Senator from Maine.

Mr. MITCHELL. Mr. President, earlier I gave a brief statement describing some of the key provisions in the bill. I indicated then that I would subsequently offer a detailed explanation of several additional provisions in the bill, and it is my intention to do that now.

I will, in the event other Senators desire to speak on this subject, yield during the course of this presentation.

<Mr. DASCHLE assumed the Chair.>

Mr. MITCHELL. I would like to address a number of the amendments to the act.

FUNDAMENTALLY DIFFERENT FACTORS

The bill provides for new authority for modifying control requirements for industrial facilities which are fundamentally different from other facilities in an industrial class. This provision is complicated and I would like to provide a detailed description of the provision and its objectives.

The Clean Water Act provides for the development of minimum, national, technology-based treatment re-

quirements for industrial dischargers. These requirements address a range of industrial categories and include effluent guidelines applying to direct dischargers and pretreatment categorical standards applying to indirect dischargers.

The amendments provide the EPA Administrator with new authority to modify a minimum, national treatment requirement for an individual facility within an industry if the facility is found to be fundamentally different from other facilities within the industry on the basis of certain factors considered by the Administrator in establishing the guidelines or standards.

The new provision provides that a facility may be found to be fundamentally different based on factors identified in sections 304 (b) and (g). These factors include the age of equipment and facilities, the process employed, the engineering aspects of the types of control techniques, process changes, and other factors deemed appropriate by the Administrator.

The Clean Water Act currently provides for establishment of minimum, national technology-based requirements on an industrywide basis but does not allow modification of requirements on a plant-by-plant basis. The Administrator has been able to accommodate variation in an industry through development of different requirements for subcategories of an industry.

In addition, the Agency developed and implemented a procedure for establishing alternative treatment requirements for individual facilities based on a conclusion that the facility is fundamentally different from the industry. These regulations were recently upheld by the Supreme Court. While there is currently no basis for the regulations in the act, the conferees concluded that some expansion of the Administrator's authority in this area is an appropriate addition to the act.

This new provision provides a clearly defined and limited authority in the statute for modification of treatment requirements for individual facilities. The provision is intended to assist the Administrator in addressing variation in development and effective administration of the national effluent guidelines and standards.

The conferees intend, however, that the Administrator use the new authority in this section sparingly. Applications under this section should be assessed with the objective of accounting for unique situations encountered in implementing national, minimum treatment requirements. Unless the circumstances of a facility are unique, the Agency should accommodate fundamental differences among facilities through the establishment of subcategories within an effluent guideline. This section should not be used in place of complete definition and subcategorization of an industry.

The conferees recognize that this section will require the EPA Administrator to make difficult decisions with regard to the magnitude of differences among similar facilities within an industry. In exercising this judgment, the Administrator should place high priority on the principle that all industries within a category or subcategory are to meet national, minimum, treatment requirements. The authority of this section is intended only to provide the Administrator with the authority needed to implement this aspect of the statute effectively and should not be used to generally relax or retreat from national, minimum requirements for an industry.

This new provision places several important limits on this new authority. These limits concern consideration of costs to a facility and procedural and other limitations.

The bill specifically excludes consideration of costs as a basis for establishing a fundamental difference with regard to an individual facility. Section 304 of the Clean Water Act authorizes the EPA to consider the cost of achieving effluent reductions, in addition to other factors, in development of a guideline for an entire industry. The EPA needs to consider cost when developing a guideline for an industry in order to determine the best available technology for water pollution control which is economically achievable for an entire industry.

Individual facilities, however, may face costs which are higher than costs to the majority of other facilities in an industry. A facility might find that differences in costs cause it to be fundamentally different from other facilities and contend that these differences justify modified treatment requirements. For example, costs of labor,

transport or materials might be presented as fundamentally different.

While a guideline is intended to account for economic impact on an entire industry, it is not intended to account for the economic impact on each individual facility. The 1972 Clean Water Act conference report stressed this point, directing EPA to ”make the determination of the economic impact of an effluent limitation on the basis of classes and categories of point sources, as distinguished from a plant-by-plant determination.”

If a facility facing higher costs than the overall industry is allowed to reduce treatment levels below the minimum level, the degree of pollution control at a facility is linked to the economic efficiency of the facility, rather than the economic ability of the industry, and the principle of an industrywide minimum level of treatment loses it meaning.

Although the act does not and should not provide a mechanism to modify the requirements of an effluent guideline on the basis of fundamentally different costs at an individual facility, section 301(c) of the act provides for modification of requirements in a case where such requirements are beyond the economic capability of the owner. Section 301(c) does not allow the Administrator to modify treatment requirements based on a showing of fundamentally different costs to an individual facility, unless these costs are beyond the economic capability of the facility and, therefore, threaten its survival.

In addition, section 301(c) is subject to section 301(l), which prohibits the Administrator from modifying any requirement as it applies to a toxic pollutant. This provision assures that toxic pollutants will be controlled, regardless of the economic capability of the discharger. The new authority for treatment modifications based on fundamentally different factors contained in the reported bill is not subject to section 301(l).

This provision is not intended to prohibit the EPA from modifying treatment requirements in a case where a fundamental difference in an aspect of a facility which is eligible for consideration-for example, age of facility, process employed-would result in a reduction in costs to a facility.

When such an eligible factor is under review, the EPA may consider the costs specifically associated with that factor, but must be able to justify a finding of a fundamental difference primarily on the basis of a substantive and technical assessment of eligible factors. The EPA shall not replace a substantive and technical assessment of eligible factors with a shortened cost test designed to indicate a fundamental difference-for example, when the costs of an eligible factor at an individual facility are twice the costs at average facilities, the factor is fundamentally different.

The reported bill specifies several procedural requirements and other limitations governing applications for modifications under this section.

Section (n)(1)(B) provides that an application be based solely on information and supporting data submitted to the Administrator during the development or revision of a guideline or on information the applicant did not have a reasonable opportunity to submit during the rulemaking. The lack of a reasonable opportunity to submit information is based solely on a lack of actual or constructive notice of the rulemaking.

This provision will assure that effluent limitations and standards are as comprehensive as possible, and thereby reduce the need for applications under this subsection. This provision will also discourage withholding of information during the rulemaking process for subsequent use in an application for treatment modification under this subsection.

In addition, where the record is already closed and an applicant has new information to present bearing on the guideline or standard, the applicant continues to have the right to petition the Administrator to reopen the rulemaking and record and consider creation of a subcategory. The Administrator's disposition of such a petition is subject to judicial review under section 509(b) of the act.

Section (n)(1)(C) provides that the alternative requirement imposed on the applicant can be no less stringent than justified by the applicants' fundamental difference from the rest of the category or subcategory with respect to eligible factors.

Section (n)(1)(D) provides that any alternative requirement shall not result in a non-water-quality environmental impact which is markedly more adverse than the impact considered by the Administrator.

Section (n)(2) requires that an application under this section shall be submitted within 180 days after the publication of the initial guideline or standard. Section (n)(3) provides that an application shall be approved by final Agency action within 180 days after submission. For the purposes of this section, final Agency action means the administrative decision issued by the EPA, following public notice and comment, as appropriate and including a statement of the basis for the decision. Section (n)(4) states that the Administrator may allow the applicant to submit clarifications with regard to information submitted in an application prior to the 180 day decision deadline.

Section (n)(5) provides that an application for an alternative requirement based on fundamentally different factors which is pending on the date of enactment may be amended by the applicant within 180 days after such date of enactment. This provision is intended to allow applicants with pending applications developed under EPA regulations pertaining to fundamentally different factors to revise the applications to reflect the requirements of this new section of the statute.

Section 301(n)(6) provides that an application for an alternative requirement under this section shall not stay the facility's obligation to comply with the effluent limitation guideline or standard which is the subject of the application.

This provision is intended to prevent EPA or the State, or the POTW in the case of indirect discharge, from delaying issuance of the permit or pretreatment mechanism during the pendancy of an application. If an application for an alternative requirement is denied by the Administrator, the applicant must comply with the limitation or standard as established or revised. This section is subject to section 301(b) and 309 as to compliance dates.

This section shall apply to existing primary and secondary national effluent limitations and categorical pretreatment standards for industrial categories, such categories as may be identified in the future, and to any revisions of guidelines or standards for such categories.

The Administrator may not use the authority of this section to modify effluent standards issued pursuant to section 307(a)(2) of this act, the general prohibited discharge standard in 40 CFR 403.5, or other requirements implementing such standards.

The owner or operator of a facility has the burden of proving to the satisfaction of the Administrator that the facility is eligible for an alternative requirement under this section. The Administrator's decision to promulgate or deny an alternative effluent limitation or standard under this subsection shall be subject to judicial review pursuant to section 509(b)(1) of the act.

This new authority is intended to provide for modifications of requirements for conventional, nonconventional, and toxic pollutants. Consistent with this objective, section 301(1) of the act, which excludes toxic pollutants from modifications under this act, is amended to allow modifications under this section for toxic pollutants. This amendment to section 301(1) does not in any way weaken the application of the section to modifications under the act other than provided under this subsection (301(n)).

The Administrator may not delegate the authority provided by this subsection to any State. In addition, it is our intention that the authority of this section be exercised only by the Administrator or Assistant Administrator for Water, rather than regional or other officials. The Administrator shall obtain the concurrence of a State before approving any alternative requirements under this subsection.

All of these provisions are to be self-implementing and are to take effect upon enactment of the Clean Water Act Amendments of 1985. The Administrator is encouraged to amend the appropriate regulations to make them consistent with these requirements; however, the failure of the Administrator to make such revisions will not affect the implementation of these provisions.

A related provision provides new authority for the EPA to collect fees for the processing of various modifica-

tions of permits and other requirements.

Substantial Federal resources are being devoted to processing application for modifications authorized by the Clean Water Act. Section 301(o) of the reported bill requires the Administrator to establish a system of fees to recover costs of reviewing and processing these applications. Applications, including resubmitted applications, are to be accompanied by an appropriate fee, as determined by the Administrator. The Administrator may develop a tiered or sliding scale fee structure so long as the aggregate amount of fees collected reflects the Federal resources actually expended in processing such applications.

Fees collected under this section shall be deposited into a special fund in the U.S. Treasury entitled ”Water Permits and Other Services.” Such funds are to be available for appropriation and to remain available until expended and are to be used to carry out the Agency activity for which the fee was charged. Creation of this special fund will assure that fees charged for processing of applications will be used to support water permit related activities, rather than other activities. The existence of this fund shall not be a basis for reductions in funding levels for related program activities.

In addition, the conference report agreed to last year provides that, in the case of three cane sugar processing mills on the Hamakua coast of Hawaii, the EPA may temporarily withdraw the applicable guideline at any time, issue a best professional judgment permit to affected facilities, and then reissue the guideline with an appropriate subcategory. This portion of the conference report expresses Congress' expectation that EPA will provide environmentally sound administrative relief to these facilities.

Section 306(c) of the bill applies to four fertilizer manufacturing plants located in Louisiana. After the passage of H.R. 1 we will be asked to pass a concurrent resolution clarifying and correcting the text of section 306(c). The intent of the provision, however, will remain the same. The Administrator is directed to issue permits for these plants under section 402(a)(1)(B) of the Clean Water Act. The plants are identified in subsection (c)(1) with reference to the Administrator's proposed action with respect to the plants, and the Administrator will have completed that proposed action before acting under section 402(a)(1)(B).

There are three potential types of discharge associated with fertilizer plants of this kind-storm water, cooling water, and gypsum. Section 306(c) does not require that a permit be issued for the discharge of gypsum into the navigable waters. Under this authority, EPA could issue a permit imposing limitations on the discharges of storm water and cooling water while prohibiting the discharge of gypsum altogether.

Section 306(c) does not change the standards or procedures used by the Administrator, or increase the discretion of the Administrator, in issuing permits under section 402(a)(1)(B) of the Clean Water Act. It does not mandate that a discharge of gypsum be allowed under any permit, nor does it in any way compel the State of Louisiana to affirmatively concur in the issuance of such permits. The State retains its authority to deny or condition certification under section 401 of the act for such permits, and the Federal permits lack force or effect in the absence of such certification and affirmative concurrence by the State.

It is not the intent of this provision in any way to encourage or sanction the issuance of permits by EPA which would provide for the discharge of gypsum waste into the Mississippi River.

NONPOINT SOURCE POLLUTION CONTROL

In using grant funds under this section for the implementation of approved programs or plans, States are not to provide assistance to individuals for construction of pollution control facilities unless such assistance is in the form of a demonstration program, as determined by the Administrator. State's may include other Federal assistance programs, including programs of the Department of Agriculture involving grant and loan assistance and cost sharing, in overall programs for control of nonpoint pollution.

States may use funds available in the new State revolving loan funds for the implementation of nonpoint pro-

grams developed under this section. Loan funds must be used in a manner consistent with all the provisions of title VI of this act.

For example, once a State has assured progress toward compliance with the deadline for construction of secondary treatment facilities, the State may make loans or provide otherwise eligible assistance to nonpoint pollution related projects.

Such loan or other assistance may be made to individuals or organizations, as well as muicipalities and other governmental units. For example, a State may provide a loan to a farmer to construct a manure storage facility if such facilities are called for in the approved State nonpoint pollution control program. A State might also provide assistance to a municipality to implement programs to control urban runoff.

STATE REVOLVING LOAN FUNDS

The provision provides that the Administrator and States may enter into capitalization grant agreements under this title.

States must agree to accept payments under a schedule to be developed jointly with the Administrator, must agree to provide a 20-percent match of Federal funds, and must agree to make binding commitments for assistance in an amount equal to 120 percent of the amount of the grant payment within 1 year. Moneys contributed by a State to match Federal capitalization grants under section 602(b)(2) are to be cash and not in-kind.

The schedule under which payments are to be made by the Administrator to the State shall be developed jointly by the State and the Administrator. Such schedule shall be based on the State intended use plan and shall provide that payments be made as expeditiously as possible, consistent with such plan. At a minimum, payments shall be made not later than the earlier of 8 quarters after the date funds were obligated by the State or 12 quarters after the date such funds were allotted to the States.

In addition, the State must agree to assure, as part of the intended use plan submitted annually, that all Federal and State funds provided to the SRF will be committed in an expeditions and timely manner. This provision reinforces the requirement that States make binding commitments for funds within 1 year of any given payment to the fund.

Subsection 602(b)(5) refers to all Federal funds, in the form of capitalization grants, and all other funds in the SRF as a result of those capitalization grants, including repayments of loans originating from those grants and State funds contributed as the required match for those grants, and funds deposited in the fund under 205(m).

The State must use these funds first to assure maintainence of progress toward compliance with the enforceable deadlines, goals, and requirements of this act, including the municipal compliance deadline of July 1, 1988, or are on enforceable schedules for compliance after that date.

Progress toward compliance with enforceable deadlines, goals and requirements of the act, in the case of treatment works that are not voluntarily on a schedule to achieve compliance, may be assured through a funding commitment or through establishment of an enforceable compliance schedule.

Thus, the requirement of subsection 602(b)(5) is met if treatment works in a State are on an enforceable schedule to achieve compliance with uniform secondary treatment requirements of the act, whether or not there is a commitment to fund such treatment works from a State revolving loan fund or with a grant under title II of this act.

Governors of each State shall make the determination of progress toward compliance required under this subsection and the Administrator shall oversee such determinations.

Once a State has met the requirement of subsection 602(b)(5) funds from the SRF may be used for any other treatment works as defined by section 212 of the act-subject to the restrictions of section 602(b)(6)-programs and projects identified under the Nonpoint Source Pollution Control Program-section 319-or programs and

projects identified under the National Estuaries Program-section 320.

This provision is intended to allow States the flexibility to utilize funds from the SRF to support a variety of measrues that the State determines are needed to achieve water quality goals. States are free to fund a wide range of pollution control projects, other than municipal wastewater treatment works, once the requirement for assuring progress toward compliance with the 1988 compliance date is met.

Further, a State must demonstrate that any treatment works which is constructed in whole or in part prior to fiscal year 1995 with funds directly made available by capitalization grants under this title or section 205(m), will meet the requirements of the sections 201(b), 201(g)(1), 201(g)(2), 201(g)(3), 201(g)(5), 201(g)(6), 201(n)(1), 201(o), 204(a)(1), 204(a)(2), 204(b)(1), 204(d)(2), 211, 218, 511(c)(1) and 513.

This restriction on the use of Fedeal capitalization grant funds does not apply to funds contributed by the State in accord with section 602(b)(2), monies repaid to the fund, or other money. State Governors shall assure that the requirements of this subsection are met.

Section 201(g)(1) limits assistance to projects for secondary treatment or more stringent treatment, or any cost effective alternative thereto, new interceptors and appurtenances, and infiltration-in-flow correction. This subsection also provides that State Governors may reserve 20 percent of a State's allotment for projects which meet the definition of treatment works in section 212(2) but are otherwise not eligible for assistance under this subsection. This Governor's reserve is intended to apply to funds made available under this title.

Section 201(n)(1) provides that funds under section 205 may be used to address water quality problems due to discharges of combined stormwater and sanitary sewer overflows, which are not otherwise eligible, if such discharges are a major priority in a States. This provision is intended to apply to use of funds under title VI as well as section 205.

As noted above, the fund may be used to assist publicly owned treatment works as defined by section 212 of the act, the development and implementation of a nonpoint source management program established under section 319 and development and implementation of an estuary program under section 320. This provision is intended to provide a basis for funding of projects to control nonpoint pollution and pollution to estuaries conducted by municipalities, a State, other public organizations, or individuals. All fund management provisions of this title apply to such projects.

The definition of projects eligible for funding under the loan program includes publicly owned treatment works as defined by section 212 of the act. This definition includes planning and design as defined in 212(1), treatment works as defined in 212(2) and replacement as defined in 212(3). Each of these aspects of treatment works is eligible for assistance under this title.

Funds under this title may be used to make loans as provided under section 603(d), but are not to be used to provide direct grants. If as a result of audits under this section, the Administrator finds a consistent and substantial failure to repay loans, he may take corrective action as provided under this title.

This section provides that loan funds may be used to refinance debt obligations of municipalities for eligible projects, where such obligations were incurred after March 7, 1985. This provision is a very important element of the Loan Fund Program in that it allows municipalities and States to work out financing plans which will allow a community to proceed with financing and construction as soon as possible and to achieve water quality benefits as soon as possible. Based on this authority States may agree to participate in project financing at a later date. The requirement in subsection 603(g), providing that municipal wastewater treatment projects be included on State priority lists is not intended to prevent a State from providing such refinancing assistance.

Section 603(h) limits the authority of subsection 603(d)(2) by providing that funds may not be used to make direct loans to support the non-Federal share of a project receiving assistance under title II of this act.

This limitation on direct loan assistance does not include ancillary assistance to the municipality which results in a lowering of costs of the obligation, for example, guarantee of the local share obligation, insurance of the ob-

ligation, et cetera. Such indirect assistance to support the costs of non-Federal share shall only be available to municipalities which face severe financial constraints preventing a project from proceeding.

The provision provides for the allotment of funds to States, reservation of funds for planning, and the reallotment of unobligated funds. Funds reserved for water quality management planning under this provision are to be used by the State agency which conducts environmental programs, rather than an agency established to manage the financing of projects with funds provided under this title.

Funds available to States under section 205(g) for the management of construction grant programs under title II may be used to assist the development of revolving loan funds under this title.

MARINE BAYS AND ESTUARIES

Section 210 of the amendments provides for set-aside of a small part of the construction grant fund to support projects for prevention of pollution to marine bays and estuaries resulting from combined storm water and sanitary sewer overflows. It is the intention of the conferees that, for the purposes, of this section, the term ”marine bays and estuaries” shall be defined consistent with the definition of estuarine zone in section 104(n)(4) of the act.

It is not the intention of the conferees that this set-aside be used for projects at the upper reaches of tidal influence of a river which eventually enters into an estuary.

OTHER FEDERAL ASSISTANCE

Section 202(f) of the act provides that assistance made available by the Farmer's Home Administration may be used to provide the non-Federal share of a construction grant project under title II of the Act. This provision states the policy of the conferees that such assistance in support of a local share is acceptable, and has been acceptable in the past. The adoption of the provision shall not be construed to imply that, prior to this action, such support for a local share was not acceptable or consistent with congressional intent and policy.

REGIONAL WATER QUALITY PLANNING

Another important amendment to the act provides that States are to pass through at least 40 percent of funds made available under section 205(j)(1) to support water quality management planning at the areawide and interstate level.

The provision was modified by the conferees to assure that a Governor, with the approval of the Administrator, could provide less than 40 percent of funds to such organizations if such funding would not significantly assist in water quality management planning. The conferees do not intend to imply that funding for areawide organizations should be limited to 40 percent of funds under section 205(j)(1). It is not the intention of the conferees that the requirement for passthrough of 40 percent of funds to areawide agencies apply to section 205(j)(5) funding.

SECTION 301(i)

The amendments also provide a specific period of 180 days in which communities may apply for variances under section 301(i). The conferees intend that no application whatsoever may be made under section 301(i) after the 180-day period following enactment of the amendment. In addition, the amendment provides that communities which are on a compliance schedule are not eligible to apply for a variance under section 301(i) at any time.

This provision includes any community which is on a schedule established prior to enactment by a court order

or an administrative order established by the EPA or a State agency. In addition, the Administrator has discretion in granting variances under section 301(i).

The conferees encourage the Administrator to use this discretion to deny applications for variances under section 301(i) where necessary to preserve the stable and effective implementation of the National Municipal Policy and related agency policies.

ADMINISTRATIVE PENALTIES

The amendments provide for new authority for the EPA to use administrative penalties in enforcement of the Clean Water Act. This provision will substantially increase the agency's authority to assure full enforcement of the act. The amendments provide that the EPA may use the administrative penalty authority in enforcement cases related to activities which do not have permits as required under section 404 of the act. It is the intention of the conferees that EPA use this authority to provide for full and aggressive enforcement of section 404.

It is also the intention of the conferees that the EPA and the Corps of Engineers develop a memorandum of understanding to provide for the efficient coordination of enforcement activities related to section 404. Such an MOU should be developed as soon as possible, but not later than 6 months after the date of enactment.

EPA has the authority to use administrative penalty authority prior to the development of such an MOU. In the event that the EPA and the ACE are not able to agree on an MOU, EPA retains the full authority to implement administrative penalty authority related to section 404 as provided in these amendments.

COMPLIANCE DATES

The amendments also provide new requirements for compliance with treatment requirements of the act. The conferees believe that these new dates are responsible and reasonable can be achieved in virtually all cases. In an unusual case where a date cannot be met despite the conscientious efforts by a facility, the conferees understand that the EPA is able to exercise its discretion with regard to enforcement and penalty authority.

In addition, it is the intention of the conferees that any action by a regulated industry to initiate litigation related to a control requirement which results in a delay in accomplishment of controls, is not a basis for the EPA to exercise its enforcement discretion.

Industries which choose to challenge pollution control regulations in court should not expect that the EPA will use its enforcement discretion and should expect that EPA will fully enforce requirements and compliance dates, regardless of court challenges.

Mr. President, in accordance with the previous unanimous consent I now yield to my colleague from Montana, the distinguished Senator BAUCUS, who as a member of the Committee on the Environment and Public Works played a key role in the development and enactment of this legislation last year.

Mr. BAUCUS. Mr. President, I thank the Senator from Maine. The Senator from Maine, who is now chairman of the Subcommittee on Environmental Pollution of the Committee on Environment and Public Works, has given yeoman leadership in this area. In fact, if it were not for the combined efforts and also those on the other side of the aisle, this legislation would not be before us today. I see Senator CHAFEE on the floor. The ranking minority member of the Subcommittee on Environmental Pollution of the Committee on Environment and Public Works, Senator STAFFORD, ranking member and former chairman of the committee is not here. Each of them deserve the thanks of the American people for all of the work they have done to bring this bill to the point where it is in the Senate and their help to secure its passage, and also to have the veto overridden in the event there is a veto.

Mr. President, it is fitting that H.R. 1, amendments to the Clean Water Act, is the first bill introduced and will be the first major piece of legislation acted upon by the Senate in the 100th Congress.

This legislation before us today does what the President asked for. It is fiscally responsible. It abandons any Federal role in funding the Nation's water cleanup program. The legislation has the strong support of the American public.

As recently as 5 years ago, the Federal Government contributed as much as 75 percent of the cost of the Construction Grants Program. On the other hand, the legislation before us today cuts current construction grant authorizations by more than half. The legislation, furthermore, totally phases out the Federal grants in 9 years.

After 1994, there would no longer be a Federal Sewage Treatment Construction Grant Program. The job of cleaning up the Nation's backlog of waste treatment will fall squarely on the shoulders of the States, as provided for in this bill.

Too often, Congress tends to focus on the public works provisions of the Clean Water Act and tends to forget that the Clean Water Act is an environmental law.

The Clean Water Act is first and foremost a pollution control law. Its purpose is not simply to address a sanitary engineering problem and create public works jobs-although we all realize it has been very effective in that regard.

The Clean Water Act, when developed in 1972, was based on two concepts and a compromise. A national goal was adopted calling for a twofold objective: To eliminate the discharge of pollutants, and maintain the biological integrity of our water. Then, as a compromise, an interim goal was added: To assure that water quality would at least support fish, shellfish, wildlife, body contact sports, and drinking water.

The first goal is as poignant and relevant today, as it was when it was adopted in 1972. We have made progress, but even the compromise goal euphemistically referred to as ”fishable, swimmable” has not been fully achieved.

These goals are the real issues confronting us today. These are the goals for which the American public will hold us accountable. It is not a debate between $12 or $18 billion. It is a debate over what we want our lakes, rivers, and streams to be.

The problem of nonpoint source pollution was also recognized in 1985 by passage of the farm bill. Farm legislation, when fully implemented in 1995, will reduce sedimentation from cropland by as much as 80 percent.

The nonpoint pollution control program in the Clean Water Act will ensure action on the other sources of nonpoint pollution. Together the provisions go hand in glove. This legislation will provide the driving force to control water pollution from rangelands, forestlands, urban areas, and other sources of nonpoint pollution.

These two laws will provide the potential for significant improvement of our Nation's lakes, rivers, and streams. The nonpoint pollution control program in the legislation is an important element in meeting the goals of the original Clean Water Act.

The benefits of a continued commitment to an adequately funded Construction Grants Program cannot be overemphasized. But in a rural State such as Montana and throughout the entire country, the greatest benefits from this legislation will come from the nonpoint program and other regulatory aspects of the legislation.

It is in the area of environmental policy where the administration-proposed legislation would do the most harm. The administration's nonpoint program amounts to no program at all. In fact, we cannot realistically expect any State to take money from the construction program to pay for a nonpoint program when we have cut construction in half and will eliminate it completely in 9 years.

The administration proposes to retreat from this step forward. The administration's bill would make a mandatory program permissive. It would then force a State to choose between addressing a serious nonpoint source pollution problem or assisting some community in the treatment of its sewage.

On the other hand, the legislation under consideration renews a commitment to address the problem of nonpoint source pollution. To meet this end, a commitment of monetary resources as well as policy is being made.

Mr. President, when the Federal Water Pollution Control Act was enacted into law, the Federal Government

adopted a goal of making the lakes, rivers, and streams of the entire country fishable, and swimmable, and reducing discharges of pollutants to zero.

In the case of those rivers and streams which were degraded, the law required cleanup. In the case of those waters which were already high quality, the law required protection.

Congress and the Federal Government entered into a commitment to the American public-to both existing and future generations-that our lakes, rivers, and streams would be clean and pure.

Coming from a State where the largest natural freshwater lake west of the Mississippi River-Flathead Lake-is still drinkable, and numerous mountain streams are pure, the value of protecting water as a national resource is readily apparent.

The Clean Water Act amendments, which were passed unanimously in the last Congress by both the House of Representatives and the Senate, build on and continue this commitment.

A commitment to a continued Construction Grant Program will ensure support for the control of community sewage. The gradual phaseout of Federal grants for construction of municìpal sewage treatment facilities, combined with the authorization of State-revolving loan funds, represents a balanced but modest approach to an enormous problem.

If anything, the EPA's own needs assessment shows that these amounts are inadequate to fulfill the Nation's needs. That is the EPA. The EPA's own survey for 1986 shows a need for $75 billion by the year 2000, a figure far in excess of the $18 billion in the legislation to be made available by the Federal Government. It is irresponsible to call this legislation a budget buster. I repeat, in view of EPA's own assessment, it is irresponsible to call this legislation a budget buster.

Sewage treatment will continue to play an extremely important role in the ongoing efforts to curb water pollution, but included with the legislation is a strong commitment to address the problems caused by nonpoint source pollution and the need for special attention to maintaining the quality of our Nation's lakes.

But the real value of this legislation is the new provision representing a renewed commitment to the cleanup of nonpoint sources of pollution and establishing a national policy that programs for the control of nonpoint sources of pollution be implemented. It is this provision and other policy changes embodied in this legislation that warrant the support of this body. For this reason, I believe this legislation deserves the support of every Member of this body.

The level of funding provided in the legislation will allow States to implement nonpoint source management programs. The problem of nonpoint source pollution is a national problem requiring a national solution.

Mr. President, I yield the floor.

Mr. MITCHELL. Mr. President, under the prior agreement, I yield to the Senator from Nevada.

The PRESIDING OFFICER. Without objection, the Senator from Nevada is recognized.

Mr. REID. Mr. President, I thank the Senator from Maine for yielding.

Mr. President, I rise in strong support of H.R. 1, the Water Quality Act of 1987. As has been pointed out, this legislation is identical to the Clean Water Act reauthorization legislation adopted last year by a unanimous vote of both Houses of Congress. Unfortunately, the President chose to veto this critical environmental legislation.

In brief, H.R. 1 authorizes $18 billion for grants and loans to help build local sewage treatment plants, and gradually shifts the responsibility for these programs to State and local governments. H.R. 1 also addresses the problems of toxic water pollution and nonpoint source pollution. Other provisions in the Water Quality Act of 1987 are aimed at improving water quality and restoring fish, wildlife, and economic and recreational opportunities in the Nation's bolstering U.S. efforts to comply with the 1978 Great Lakes Water Quality Agreement; and strengthening an existing program to improve water quality in lakes.

Not only is H.R. 1 supported by the House and the Senate, it enjoys strong support from environmental, industry, and State and local government organizations.

The goal of the 1972 Clean Water Act sought the eventual elimination of all pollution discharges into the Nation's rivers, lakes, and streams. Although this goal remains unmet, we have made considerable progress. In fact, the Truckee River in Northern Nevada is a good example of a river that has benefited from this landmark legislation. By investing in the objectives set forth in H.R. 1, we can realize the goals of the 1972 Clean Water Act.

As a cosponsor of S. 1, an indentical bill to H.R. 1, I urge my colleagues to give H.R. 1 the overwhelming support it deserves.

I appreciate the Senator from Maine yielding.

Mr. MITCHELL. I thank the Senator.

Mr. President, under the prior consent agreement I yield to the distinguished Senator from Tennessee who since entering the Senate has been one of the leaders in protecting the American environment.

The PRESIDING OFFICER. Without objection, the Senator from Tennessee is recognized.

Mr. SASSER. Mr. President, I thank the distinguished manager of the bill for his very gracious comments.

Mr. President, I am pleased that the 100th Congress begins with consideration of one of the most important pieces of legislation that we will consider-the Water Quality Act of 1987. And I am pleased to be an original cosponsor of this very, very important legislation. Given the paramount importance of clean water to the Nation, it is appropriate that the Water Quality Act of 1987 was the first piece of legislation introduced in the 100th Congress. It is my hope that this bill will be the first one passed by this Congress as well.

It is unfortunate that we are being forced to revisit this legislation. I was frankly surprised that the President chose to veto the Water Quality Act last November. The votes in both Houses reflected overwhelming support for the bill. The need for this bill was critical in cities and towns all across the United States. The President's veto of the Clean Water Act reauthorization, I am sorry to say, demonstrated a callous disregard for the health and safety needs of literally millions of Americans.

As a result of the President's veto, some $18 billion in grants for wastewater treatment facilities have been delayed. This delay has jeopardized construction of essential sewage treatment facilities in municipalities throughout the country. Many of these cities are already under pressure from the Environmental Protection Agency to have their sewage treatment plants upgraded to secondary status by 1988. The delay caused by the administration's veto has only made it more likely that this deadline will not be reached.

In my native State of Tennessee alone, more than 53 towns and cities have been affected by the delay in passage of this bill. Because much of the $35 million slated in this bill for Tennessee sewage treatment facilities and water quality improvement programs has not been forthcoming, many of these municipalities are facing facility construction slowdowns or halts. Fortunately, those of us on the Appropriations Committee saw the wisdom of continuing to fund the Wastewater Treatment Facility Grant Program this fiscal year at $1.2 billion, in the event that this bill was not signed into law. While this has allowed some Tennessee towns, such as McMinnville, to move forward with the expansion and upgrade of their treatment plants, many other Tennessee towns have not been so fortunate.

Mr. President, funding for wastewater treatment facilities is only one of the many important features of this legislation. The bill contains new programs to identify and control toxic pollutants in rivers, lakes, and estuaries. I am particularly interested in the Clean Lakes Program set forth in the act. This Clean Lakes Program recognizes that there is presently no comprehensive analysis of the quality of lakes nationally. What we do know is that many of our lakes are becoming impaired and that we need to formulate a program to address this problem.

I have seen such problems first hand, Mr. President. Last year, I travelled to Kentucky Lake, in western Tennessee to examine reports I had received on deteriorating water quality. What I found on this journey was very disturbing. Mussel divers in the Kentucky Lake area reported harvests of mussels are dramatically down, in some cases by as much as 75 percent. Commercial fishermen showed me catfish which were literally decomposing from within. More and more fish caught in this area were not suitable for human consumption. This we fear

is caused by the water quality present in this lake. These firsthand reports were echoed in panel discussions I chaired on the quality of water in Kentucky Lake.

It is clear that the drought problems we have recently experienced in the Southeast added to the problems in Kentucky Lake. It is equally clear that we do not yet know enough about the causes of the pollution in Kentucky Lake, nor about the damage from this pollution in this lake to come to a conclusion.

I have called on Federal, State, and local government bodies to work together in attacking the problems in Kentucky Lake. The Clean Lakes Program in this bill can play a critical role in this effort. Indeed, including Kentucky Lake in the Lake Water Quality Demonstration Program established under the Clean Lakes Program would go far in addressing the problems in this beautiful lake that is so vital to the commercial well-being of areas of my State and also Kentucky. It is my hope that the Administrator of the Environmental Protection Agency will work with us to see that this magnificent lake, known as Kentucky Lake, is given high priority under this demonstration program.

For this reason, Mr. President, and for many others, I, frankly, believe that it is very essential that we move swiftly on this important piece of legislation. The American people will have a right to expect that their water will be clean. The American people have a right to expect that their Government will act in such a way that the environment will be protected not just for this generation but for future generations.

So I am confident that my colleagues will once again give this legislation the resounding support that it is entitled to.

Mr. President, at this time I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee has yielded the floor.

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. CHAFEE. Mr. President, I have a chart which compares the three bills: the original Senate bill, the House bill, and the conference report. The reason that I would call them to the attention of this body is to better understand what took place in the conference. That, of course, is the bill that we have before us today.

Let me first just give the overall totals. The Senate bill which passed here originally-actually it passed on the June 13, 1985, which gives you some indication of how long we have been dealing with this clean water business, this legislation-had a total cost of $19.6 billion. That passed June 13, 1985. Along came the House with its bill, which it passed over there on July 23, 1985, the same year. That bill was not $19.6 billion, but that was $26.9 billion. That is what we went to conference with: the House bill being almost $26.9 billion, the Senate bill being about $19.6 billion.

So there is about a $7 billion difference.

The legislation that came back as a result of the conference, the bill we are considering here today, is $20.7 billion. In other words, we went up $1 billion in the Senate bill that we went into conference with, and the House came down $6.2 billion.

What happened to some of the measure?

Just to give you examples, and these are some of the special projects, these were the things that upset the administration, I believe rightfully so, and that we succeeded in eliminating.

Puget Sound, in for $1.2 billion in the House bill, zero in the Senate, and in the conference we came out with zero.

New York-New Jersey harbor, $40 million in the House bill, zero in the Senate, zero in the conference report.

San Francisco Bay, $18 million in the House bill, zero in the Senate, zero in the conference.

Newtown Creek, $300 million in the House bill, zero in the Senate, zero in the conference.

Naco, TX, $10 million in the House bill, zero in the Senate, zero in the conference.

Deer Island, Boston, $30 million in the House bill, zero in the Senate, zero in the conference.

Des Moines, $85 million in the House bill, zero in the Senate, and $50 million in the conference.

And so it goes.

I think the administration should be very grateful that we are able to beat down these amounts. Not only that, but the other key point that I would make, particularly to the administration, is that this legislation comes to an end. When we finish this in 1993, there are no more Federal appropriations for wastewater treatment facilities.

Mr. President, I ask unanimous consent that this document be printed in the RECORD at this point.

There being no objection, the table was ordered to be printed in the RECORD, as follows:

Tabular, graphic, or textual material set at this point is not displayable.

Mr. CHAFEE. I thank the Chair.

Mr. STAFFORD addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr STAFFORD. Mr. President, I rise in support to H.R. 1. It represents over 4 years hard work by both bodies of the Congress. It is the same bill that was passed unanimously by both Houses last fall. Unfortunately, the President pocket vetoed that bill. We are here today to reaffirm our position in favor of environmental protection by passing the bill again.

As my colleagues already know, the House of Respresentatives passed this bill last week by a vote of 406 to 8. It is my hope and expectation that the Senate will pass this bill by an equivalent margin.

When we started the long process of reauthorization 4 years ago, we discovered that there was a compelling need to make improvements in the Clean Water Act. The bill before us accomplishes that. It narrows some troubling loopholes, tightens controls on toxic pollutants, and establishes a much needed program to manage runoff or nonpoint source pollution.

Just as importantly, it provides for an orderly phaseout of Federal subsidies for construction of sewage treatment plants. This was a difficult issue, as my colleagues will recall, but gradually we succeeded in building a political concensus for phasing out the grants program amd providing an orderly transition to State revolving loan funds.

I want to remind my colleagues that the Congress gave full consideration to the President's initial proposal to phase the program our more quickly. After due consideration, the Congress decided that $18 billion-divided between traditional grants and capitalization grants for the State revolving loan funds-is the minimum amount needed.

Indeed, Mr. President, many have said on appropriate scientific evidence that the needs of the country still run something on the order of $100 billion.

So as has been said before, the amount provided in this bill is the bare minimum that can move us ahead for fishable, swimmable waters in this country over the next several years.

My colleagues are well aware that the administration wants to knock this figure down by an additional $6 billion. I would say to my colleagues that we already have reduced this program as far and as quickly as we prudently can. If an amendment is offered to reduce the program further, this Senator will oppose it vigorously. We must keep faith with the American people and with the various parties with whom we forged a political concensus-the States, cities and towns, environmental organizations, and others.

Mr. President, this is a good bill, and it is a fair bill. It's contents and its intent are well explained in the conference report and floor statements at the end of the last Congress. This Senator is proud to have been a participant in its development. Unanimous votes are rare, but this bill passed both the House and the Senate 3 months ago without a single dissenting vote. This is a testment to the widespread political support that this bill enjoys.

Mr. President, in closing I would like to make a comment about congressional intent behind passage of this

law. As has been noted, this bill is the same as the bill placed before the President last year. Therefore, the statement of managers on that bill, which is found in Report No. 99-1004, contains the primary legislative history on this bill. That statement of managers, as explained by conferees on the floor of the House and Senate last October, should be viewed by courts as the most authoritative statement of congressional intent.

Mr. President a vote in favor of this bill is a vote for the environment. This Senator and his colleagues who developed it, urges his colleagues earnestly to ratify their previous vote and again support this bill.

Mr. President, I yield the floor.

Mr. MITCHELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Maine.

Mr. MITCHELL. Mr. President, I commend the Senator from Vermont for his statement. I would simply like to say to the Members of the Senate and to the American people that for the previous 6 years Senator STAFFORD served as chairman of the Senate Committee on Environment and Public Works. He chaired that committee as fairly, as evenhandedly, and as effectively as was humanly possible, and it is due largely to his leadership and his example that the committee, the Senate, and the Congress were able to enact so much landmark environmental law, particularly in the closing days of the recent session.

In behalf of all of the members of the committee, and more importantly all of the American people, who benefit from his leadership, I want to thank and commend the distinguished Senator, the former chairman of the committee.

Mr. STAFFORD. Mr. President, if the Senator will yield, I simply want to express my appreciation for those very kind words and to say that without his leadership on his side of the aisle and his hard work on the committee generally we would not have enjoyed the success we did. I thoroughly enjoyed being chairman of the committee in those years and I know that the committee now, with the leadership of the Senator from Maine, will have further notable accomplishments.

Mr. MITCHELL. I thank the Senator.

Mr. LAUTENBERG. I would like to address an issue which has come up recently in the municipality of Edgewater in my home State of New Jersey.

Edgewater is planning to construct a facility to provide secondary treatment of sewage. The community developed facility plans and designs, but was not ranked sufficiently high on the State priority list to receive Federal funding in a timely manner.

In an effort to construct the plant as quickly as possible, the community worked with private firms to design and construct the facility. After the community entered into a contract for construction of a facility, they learned that Federal funding could be available after all.

I am concerned that, in order to proceed with Federal grant assistance, the community may be forced to abandon the work completed to date under the private agreements.

Would the Senator agree that, to the extent possible under applicable regulations, the EPA should be encouraged to avoid duplication of this work?

Mr. MITCHELL. Yes, I agree with the Senator. To the extent regulations allow, the EPA should be flexible in allowing the community to make use of this work.

Mr. LAUTENBERG. On a related point, I am concerned that the enactment of section 204 of the Clean Water Act amendments before us today may preclude the community from pursuing resolution of difference of interpretation of various Federal procurement and project management regulations. Is it the Senator's view that enactment of section 204 would necessarily prevent the community from challenging these regulations?

Mr. MITCHELL. I do not believe that section 204 should in any way prevent the community from challenging the existing regulations in question.

Mr. LAUTENBERG. I thank the Senator for his thoughts on this issue. I hope he will work with me in resolv-

ing any further issues that may arise relating to this project.

Mr. MITCHELL. I shall be happy to do whatever I can to assist the Senator in this effort.

Mr. GRAHAM. Mr. President, while I realize the urgency in approving the Clean Water Act without amendments, I would like to emphasize the need for Lake Okeechobee to be included as a priority demonstration project under the Clean Lakes Program. This Florida lake, which is the second largest freshwater lake in the United States and which feeds the Everglades, is dangerously close to eutrophication and is indeed worthy of priority designation.

Mr. MITCHELL. Mr. President, I realize the environmental significance of lake Okeechobee and the serious nature of the threat posed to the lake by pollutants. Given the condition of this lake, inclusion is consistent with the intent of last year's conferees and we would direct the agency to include Lake Okeechobee as a priority demonstration project under the Clean Lakes Program.

Mr. GRAHAM. As the Senator from Maine is aware, I would have offered as an amendment the inclusion of Lake Okeechobee; however, given the need to avoid any amendments to the bill, I will accept this assurance based on the conferee's intent. I thank the Senator.

Mr. BAUCUS. Included within the legislation is an authorization for a comprehensive water quality investigation of the Clark Fork/Lake Pend Oreille system in Montana. The purpose of this study is to identify sources of pollution and to enhance the water quality of this lake and river basin. Lake Pend Oreille is the largest lake in Idaho whose waters drain approximately 22,000 square miles.

The Clark Fork River and Lake Pend Oreille are primary environmental features of western Montana and northern Idaho. The river and lake is an outstanding cultural and economic resource for the entire region.

Nutrient contamination and sedimentation from point and nonpoint sources of pollution are believed to be responsible for algae blooms, patches of floating scum and foam, and other signs of pollution in the lower rivers, reservoirs, and Lake Pend Oreille. Toxic mine runoff flowing into both tributaries and the mainstream have resulted in the designation of four Superfund sites along the river. As part of the remedial investigation being conducted under the authority of Superfund for the Silver Bow Creek site along a tributary in the upper Clark Fork River, the Environmental Protection Agency is investigating toxic contamination along approximately 60 miles of the river. Moving quickly to undertake this study will provide for a coordinated basinwide effort.

Mr. SYMMS. Mr. BAUCUS and I sponsored this amendment in recognition of the importance of this lake and river resource to the entire region. Tourism and recreation is the second largest and fastest growing industry in northern Idaho. This tourism is heavily dependent on the quality of Lake Pend Oreille.

Public conern for the protection and clean-up of the Clark Fork River and Lake Pend Oreille is broad-based and widespread in both Idaho and Montana. Recent events, including the discharge permit controversy at the Frenchtown Pulp Mill, have focused public attention on water quality degradation and a pressing need for a basinwide approach to water quality research and management.

Mr. BAUCUS. When this amendment was offered, we did not know what this study would cost; therefore, no specific authorization numbers were included in the legislation. Recently the State of Montana and the U.S. Geological Survey submitted a proposal to the Environmental Protection Agency to conduct intensive water quality investigations on the Clark Fork and Lake Pend Oreille. The State of Montana proposal for an assessment of nutrient pollution and euthrophication would require $500,000 over a 3-year period. Currently little reliable information exists to provide for the overall management of the lake and river. This portion of the study would benefit both Montana and Idaho.

Mr. SYMMS. The U.S. Geological Survey has developed a proposal for a detailed euthrophication study of Lake Pend Oreille which would require $800,000 over a 4-year period. This study, when completed, would provide a sound basis for resource decision in Montana and Idaho in order to protect the lake. It is important that both aspects of the study proceed together since they are meant to be coordinated.

Mr. MITCHELL. It is the intention of the conferees that this study be funded by EPA out of programs authorized by this legislation and any other appropriate sources of funds available to the Agency.

Mr. STAFFORD. Mr. MITCHELL is correct in his explanation of the committee's intention. It is my understanding that the Clark Fork River and Lake Pend Oreille are degraded by point and nonpoint discharges into the water. By including a specific requirement for a Clark Fork/Lake Pend Oreille study, the committee has recognized the importance of a coordinated effort to undertake this study.

Mr. BAUCUS. I thank Mr. MITCHELL and Mr. STAFFORD for their response. Much of the Clark Fork River drainage is comprised of public lands, largely part of the U.S. forest system. The U.S. Forest Service and the State of Montana have entered into a memorandum of understanding concerning the control of non-point source pollution. While the legislation requires the Environmental Protection Agency to undertake the study, am I correct in stating that it is the conferee's intention that the Forest Service fully participate in the study?

Mr. MITCHELL. Mr. BAUCUS is corrent.

Mr. BAUCUS. The Upper Clark Fork River is the site of a Superfund site at Silver Bow Creek, a site at the old Anaconda smelter and at Milltown Dam just outside of Missoula. The Environmental Protection Agency is currently undertaking a remedial investigation and feasibility study of these sites. The toxic waste problem has affected a large stretch of the river. There is an opportunity to coordinate the Clark Fork River/Lake Pend Oreille study with the Superfund investigations of the river. A coordinated approach which would not delay the ongoing Superfund effort would be the most cost-effective way to address the problem and would also ensure a truly comprehensive assessment of the river.

Mr. SYMMS. Mr. BAUCUS raises an important point. All pollutants which enter the river upstream of Lake Pend Oreille have a potential to impact the lake. The importance of Lake Pend Oreille to north Idaho cannot be emphasized enough. It appears to me to be cost effective and prudent to undertake a coordinated comprehensive assessment of the basin.

Mr. MITCHELL. Both Mr. BAUCUS and Mr. SYMMS raise important points. While this legislation before us today deals with amendments to the Clean Water Act, it makes good sense to coordinate efforts undertaken under this Act with activities undertaken under other environmental statutes. These programs should be coordinated to the maximum extent possible.

Mr. BAUCUS. I thank Mr. MITCHELL and Mr. STAFFORD for their assistance.

Mr. SYMMS. I join with Mr. BAUCUS in thanking Mr. MITCHELL and Mr. STAFFORD.

Mr. DURENBERGER. Mr. President, we are today considering the Water Quality Act of 1987. This is a bill to continue and expand the Nation's Clean Water Act which has since 1972 provided environmental protection for the quality of our lakes, streams, rivers and estuaries.

This reauthorization of the Clean Water Act has been developed over many years and reflects a blending and compromise of all views including those heard in both Houses, those expressed by members of both parties, views of the Congress and the administration, views of industry and the environmental community.

This legislation was considered by the Congress just before adjournment last year. It was adopted by the Senate 96 to 0. It was also adopted unanimously by the House of Representatives. Around here that is an almost unprecedented level of support for a major piece of legislation like this. The bill we introduce today is that same bill.

The bill adopted by the 99th Congress failed enactment due to a Presidential pocket veto. That was in my view a most unfortunate decision on the part of the President and his advisers. This legislation already includes much to accommodate the views, both budgetary and of a substantive nature, that were put forth by the administration and its representatives during the legislative process.

Our difference with the President comes down to a matter of budget priorities. I would say to the President that the Construction Grants Program has already made its contribution to deficit reduction. In 1981 when this

administration came to office grants to State and local governments to build sewage treatment projects were approximately $5 billion per year. The administration insisted on a greatly reduced program and one that was restructured to eliminate many of the then eligible activities. And after a year of tough debate, a compromise was reached between the Congress and the administration to reduce and restructure the Construction Grants Program. For its part the Congress understood that compromise to include a 10-year commitment to fund the Construction Grants Program at $2.4 billion annually. And that is precisely the level of funding this bill provides.

This bill fulfills the promises made in 1981 when the Construction Grants Program was last reauthorized. One need not rely on my testimony as to the agreement reached between the Congress and the administration back in 1981. The record is replete with references to that commitment. For instance in a committee hearing on the 1985 budget proposal, Mr. William Ruckelshaus, then Administrator of the Environmental Protection Agency, described that agreement in these terms:

There is an understanding that there is an agreement with the Administration and with the Congress that for 10 years this level of funding, at least, is a commitment. If you will note the difference between what we submitted to the President in terms of our budget and what we are now requesting is somewhat less. We went down to $2.37 billion, and it went back up to $2.4 billion as a result of that commitment. That was something that the Administration put back into our budget over our submission.

Mr. President, there you have Bill Ruckelshaus prosposing a modest cut in the Construction Grants Program and somebody at OMB telling him to take it back up to $2.4 billion because the administration had committed to that level for 10 years. That's a pretty good indication that a clear and solid pledge for funding had been made as a part of the 1981 reauthorization. Mr. Ruckelshaus is no longer at EPA, of course. And there have also been changes to OMB. But changes in advisers shouldn't be cause for abandoning commitments.

So it was unfortunate that this bill failed enactment last year. And I urge the President of the United States, in light of the history of this program, to reconsider his decision to withhold his signature from this bill. It is a good bill. It has broad support. It continues a necessary and successful program of the Federal Government. It is a tribute to the two members of our party, Senator CHAFEE and Senator STAFFORD, who had such a large role in bringing it to unanimous approval in both Houses of the last Congress.

We are here today largely as a result of the tireless work of the distinguished Senator from Rhode Island <Mr. CHAFEE>, who was chairman of the Environmental Pollution Subcommittee in the 99th Congress. Along with Senator MITCHELL, the previous ranking member of the subcommittee, and Senator STAFFORD, the previous chairman of our full committee, the Senator from Rhode Island has spent long hours in hearings, markup, and conference sessions and floor debate to bring this bill to this point in the legislative process. This is a major piece of legislation. It has been pending before the Congress for several years. And over that whole period, Senator CHAFEE, has been a consistent champion of the Nation's water resources. He has shown no inclination to compromise the goals of the Clean Water Act just to get a bill and today his dedication to those principles is rewarded wth an excellent piece of legislation that adds much to a law which has already been quite effective in improving the quality of the Nation's surface waters.

Before turning to the substance of this legislation, let me just mention the role of two of my fellow Minnesotans who serve in the other body and who were instrumental in developing this legislation. Both Representative STANGELAND and Representative OBERSTAR from Minnesota serve on the Water Resources Subcommittee of the House and were active members of the conference on this legislation. All of us from Minnesota are proud of the contribution they have made to this bill.

The principal feature of this bill is a reauthorization of the Municipal Wastewater Treatment Construction Grants Program. Title II of the Clean Water Act has provided more than $40 billion to the cities of our country to build sewage treatment systems over the past decade and one-half. We add another $18 billion to that commitment with the enactment of this bill. But we also begin the process of phasing out the Construction Grants

Program. During the phase down period, States will convert Federal grants into revolving loan programs so that Federal dollars can be recycled and will continue to protect the Nation's waters well into the future.

One controversial aspect of this legislation was the allocation formula for the Construction Grants Program. In June 1985, when the Senate was considering this bill for the first time, I felt compelled to put together a coalition of Members representing the Great Lakes States to protest the allocation formula that was included in the bill as reported by the Environment Committee.

The formula was grossly unfair to the Great Lakes States and would have threatened our efforts through the water quality agreement of 1978, an international treaty with our closest friend in the community of nations, Canada, to restore and maintain the quality of the waters of this international treasure. I will have further comments on the Great Lakes at a later point in this statement, but for now let me simply say that I am very happy to tell the Senate today that the construction grants allocation formula in this bill is fair to the Great Lakes States.

There are several other provisions of this legislation which should be mentioned in any thorough summary of its features; the Clean Lakes Program is reauthorized and extended to problems of acid mitigation for lakes damaged by acid rain; the bill contains a provision prohibiting backsliding from effluent limitations in existing permits; there is a new estuary program and a program to further the efforts to clean up the Chesapeake Bay; and we have established a new role for Indian tribes in achieving the goals and requirements of the Clean Water Act.

There are three major provisions of the legislation relating to nonprofit sources of pollution, stormwater discharges and the Great Lakes which I will discuss at length at a later point in the debate. Before doing so, let me, if I may Mr. President, make brief comment on the antibacksliding provision of this legislation. The purpose of the antibacksrliding amendment is to assure that we keep the improvements in water quality that have already been accomplished under the act. There are exceptions to the antiback-sliding requirement, both for permits based on best practicable judgments and those based on water quality standards. But even with the exceptions, the intent and effect of the legislation is clear. Except in extraordinary circumstances those improvements in water quality which have been achieved as a result of permits issued under the Clean Water Act will be maintained and other factors including improvements in water quality due to additional efforts under the act, the promulgation of different and less stringent effluent guidelines, or other unrelated cases, cannot be used as a justification to shutdown pollution control technology that is in place and operating to meet effluent limitations in existing permits.

NONPOINT SOURCE POLLUTION

The legislation we are reporting today establishes a new program under the Clean Water Act to develop management programs to control nonpoint sources of pollution.

The new section 319 of the act will require each State, individually or in combination with adjoining States, to submit a proposed nonpoint source pollution management program to the Administrator of the Environmental Protection Agency within 18 months of enactment of this legislation. These State programs will have seven principal elements.

First, they will identify waters within each State which are not expected to attain water quality standards or the goals of the Clean Water Act without control of nonpoint sources of pollution.

Second, the State programs will designate categories, subcategories, or particular nonpoint sources that contribute significant pollution to those waters.

Third, the State programs will identify best management practices, so called BMP's which will be undertaken to reduce pollution in each category or subcategory taking into account the impact of the proposed practice on ground water quality.

Fourth, the programs will include nonregulatory or regulatory measures for enforcement, technical and finan-

cial assistance, education, training, technology transfer, or demonstration projects to assist in the development and implementation of BMP's.

Fifth, the program will include a schedule containing annual milestones for utilization of the measures identified and implementation of the BMP's identified at the earliest practicable date.

Sixth, the program will contain assurances that existing State laws are adequate to carry out the proposed program or contain a stated intent to seek additional needed authority.

And finally, the State programs will identify Federal financial assistance programs and Federal development projects to be reviewed by the State for their consistency with its proposed nonpoint management program.

The provision that adjoining States may develop proposed programs together is intended to promote cooperation between States. Water quality problems may result from transboundary delivery of pollutions that are not sufficient to cause identification of the water body for controls in the upstream State, but which nonetheless contribute substantially to water quality problems in the downstream State. Until those upstream sources of nonpoint pollution are brought under control, the nonpoint source pollution problem in the downstream State may not be effectively resolved, as no measure of control applied in the downstream State will affect the pollution in the upstream State. In such case, the upstream State may have little incentive to incure program costs that will result in water quality benefits primarily to the downstream State. The Administrator is given the authority to provide extra funding for such interstate cooperative efforts under the provisions of the Water Quality Act of 1987.

A joint cooperative management program may also be appropriate when the affected water body is shared by more than one State, for instance, an estuary or lake or river that forms the boundary between two or more States.

In the conference on this legislation last year, the Senate agreed to a House provision which provides for convening an interstate management conference when nonpoint pollution in one State causes water quality problems in another. Such a conference can be convened at the request of a State or by the Administrator acting on information which is available. If the conference reaches any agreement with respect to reducing nonpoint pollution in the upstream State, the program of that State shall be modified to reflect the provisions of the agreement.

This legislation requires each State to identify those waters within its boundaries which, after implementation of point source controls, will not attain or maintain water quality standards or the goals and requirements in the Clean Water Act without controlling nonpoint sources of pollution. The State need not demonstrate that the nonpoint sources of pollution are the sole cause for the water quality standards not being attained or maintained. The fact that the standards are not likely to be attained or maintained under existing conditions in the reasonably near future, and that there are loadings of pollutants from nonpoint sources of pollution that can reasonably be expected to be contributing to the water quality problems, will provide sufficient reason for a State to identify such water under this program. In identifying these waters, the State should not only focus on the immediately adjacent waters to the nonpoint sources, but also consider downstream segments, lakes, and other water bodies where such pollutants may accumulate and cause water degradation.

The reference to the water quality standards and to the goals and requirements of the Clean Water Act arises from the fact that not all water quality standards yet reflect the act's goals and requirements. In such cases, identification and control of nonpoint sources can contribute to improvement in water quality and upgrading of water quality standards.

In reference to specific nonpoint sources under section 319 the term ” significant” is inserted to exclude trivial sources of pollutants or sources of pollutants which are not related to the water quality programs identified by the State program. The term ”categories” in this subsection could include sources such as cropland, rangeland, pastureland, forestland, construction sites, industrial sites, mines, residential areas, streets, roads, highways, other developed land and wild areas. Within each of these categories, subcategories can be defined on the basis of

characteristics such as geographical location, type of activity, size of facility, topography, and other factors. The State has broad discretion to establish categories and subcategories that are relevant and appropriate for the types of nonpoint source pollution that the State identifies and the BMP's will implement to control them. However, the categorization must be sufficiently comprehensive to include all significant sources.

Particular nonpoint sources as referenced in this section could be identified when they, in and of themselves, are significant contributors of pollutants, or in some way are sufficiently unique that they cannot reasonably be included in one of the categories or subcategories.

The term, ”best management practices,” is left undefined in this bill because of a concern that any definition would limit the States' flexibility and perhaps undercut existing programs in which best management practices have been identified, including conservation tillage, grassed waterways, cover crops, undisturbed field perimeters near waterways, and terracing. The selection of the appropriate BMP's in a particular instance would depend upon soil type, topography, desired crop, and other factors.

Best management practices have also been identified for reducing runoff from urban areas-including storm water containment structures-construction areas-including erosion barriers such as straw bales and dikes-silviculture areas-including careful road placement, culverting, grassing of abandoned roads and skid trails-and grazing lands-including herd and vegetation management.

States are required to consider the impact of management practices on ground water quality. Because of the intimate hydrologic relationship that often exists between surface and ground water, it is possible that measures taken to reduce runoff of surface water containing contaminants may increase transport of these contaminants to ground water. The State should be aware of this possibility when defining best management practices especially in aquifer recharge areas.

Mr. President, this legislation allows the States great flexibility to design management programs containing regulatory or nonregulatory components, or a mixture of the two. The list of possible program elements is not intended to be exclusive. It is expected that States will differ in the program strategies they adopt. However, a State program must have a clear purpose which is to achieve implementation of best management practices by the identified sources as soon as practicable so as to reduce nonpoint pollutant loadings and improve water quality within that State.

The State is expected to demonstrate that its management program will provide reasonable assurance that appropriate control measures will actually be adopted by the categories, subcategories and specific resources identified in the State's program. Further, the State is required to commit itself to a schedule containing milestones for implementation of BMP's by such source. This is a requirement that the State take responsibility for the effectiveness of its program in terms of implementing the best management practices by sources, as distinct from merely committing to carry out its identified program activities. The Administrator, in awarding subsequent program grants must consider the State's record in meeting these commitments and determine that the State is satisfactorily implementing its program.

Milestones for both program implementation and the implementation of best management practices by sources must be established to provide for implementation at the earliest practicable date. This requirement reflects the importance of nonpoint source pollution problem and is intended to demonstrate congressional intent that BMP's be implemented expeditiously. Consistent with this general requirement, States may establish different milestones for different categories of sources. No single date or statutory schedule is included in order to allow the State to take account of variations in the number and types of sources and pollutant reductions. Similarly, different States may commit to different schedules based on characteristics of the State's program.

The bill also provides that the States will identify Federal financial assistance programs and Federal development projects for which the State will review individual assistance applications and development projects for their effect on water quality to determine if they are consistent with the State's nonpoint source pollution man-

agement program.

This subsection is based on the provisions of Executive Order 12372. This Executive order, issued by President Reagan, replaces OMB Circular A-95 and establishes procedures by which State authorities may comment upon applications for Federal assistance and Federal development projects to assure that the federally supported activities and projects are consistent with State needs and objectives. This bill assures that the provisions of the Executive order, as in effect on September 17, 1983, will be applicable to the State's implementation of this review process, with respect to its nonpoint source management program, regardless of any subsequent revisions of the Executive order. The bill also allows States to designate any Federal assistance program or development project listed in the most recent Catalog of Federal Domestic Assistance, rather than just those programs and projects subject to the current Executive Order 12372. The purpose of this provision is to allow the State's to review any Federal program or project that the State determines needs to be reviewed for consistency with its nonpoint management program. This provision builds upon established procedures for State review of Federal activities. It will provide the States with an important tool to assure that proposed Federal assistance and development projects are implemented in a manner which the State deems consistent with its nonpoint source pollution management program.

In developing its program the States may use information developed under other pertinent sections of the Clean Water Act in the development of their programs, particularly the section 208(b) waste treatment management plans, if the State determines those plans to be consistent with the goals and objectives of this new section. States may also cooperate with local agencies or organizations in the development and implementation of their programs. This would include agencies receiving funding under section 205(j) of the Clean Water Act and soil conservation districts.

In many cases, information and institutional relationships developed under the section 208 planning process will be relevant to, and consistent with, the requirements and objectives of this bill. Many States relied upon regional organizations and the section 208 planning process to gather needed data about nonpoint source pollution and to promote local and regional cooperative pollution control efforts. The States are encouraged to build upon these program elements in constructing the program required by this bill. However, the bill does not require the use of section 208 plans or local agencies and organizations because some State programs have evolved well beyond the section 208 planning efforts, and also because some States gave inadequate or inappropriate attention to nonpoint sources in their 208 plans. In any case, the State has the flexibility to select the program elements that will most effectively fulfill the requirements and objectives of this bill.

The States are authorized to develop their programs on a watershed-by-watershed basis as is appropriate in a program that focuses on water bodies or segments which are not meeting water quality standards. However, this provision should not result in fragmented programs farmed out to local agencies or organizations. We are establishing State programs in this section and expect central, policy-setting direction from the States in implementing this program. In that regard, Mr. President, I would highlight a significant difference between the House and Senate bills from the last Congress. The House bill would have allowed the States to develop narrow programs for particular watersheds or categories of nonpoint pollution and satisfy the requirements of the legislation. The Senate bill included a broader scope including all water bodies within a State exhibiting nonpoint problems and all categories and subcategories contributing to those problems. This bill adopts the Senate approach.

As with any cooperative Federal-State program, this legislation includes procedures for review and approval of the State program. The Administrator shall decide whether to approve or disapprove a State program within a 6-month period after it is received. If the Administrator determines that it does not comply with the requirements of this act, he must notify the State of any modifications necessary to obtain approval. The State is then given 3 additional months to submit a revised program, to be approved or disapproved by the Administrator. If the Administrator determines that a State management program meets certain requirements he will approve the pro-

gram.

If the Administrator fails either to approve or request modificiation of a submitted State program within 6 months of receipt, the program is deemed to be approved. Likewise, if the Administrator fails to approve or disapprove a program revised at his request within 3 months of receipt, such a revised program is deemed to be approved. This provision is intended to assure that implementation of programs to control nonpoint sources of pollution are not delayed because of inaction on the part of the Administrator.

In determining whether the proposed program meets the requirements and objectives of the Clean Water Act, the Administrator should take into account any public comments he had received, including those of downstream States that may be affected by the program. The Administrator's review should involve considerably more than a checklist of required program elements. Under this legislation, the Administrator must review submitted programs in light of the goals of the Clean Water Act and the purpose of this new section which is to achieve reduction of nonpoint source pollutant loadings by the implementation of best management practices by sources and to do so at the earliest practicable date. Before approving the program and awarding Federal grants to support its implementation, the Administrator must be persuaded that the program is capable of meeting the objectives.

If a State fails to submit a nonpoint source management program consistent with the new section 319, the Administrator is to carry out some requirements of the act on behalf of that State. The Administrator is thus required to identify waters within the noncomplying State exhibiting nonpoint pollution problems and designate categories or subcategories of significant contributors to that pollution. Any actions of the Administrator pursuant to this subsection shall be reported to Congress.

Subsection (h), (i), and (j) of the new section 319 authorized Federal grants to States to assist in implementing approved management programs and authorizes funds to be appropriated to the Environmental Protection Agency for the administration of this program. The Federal grants are not to exceed 60 percent of the costs of implementing the management program of any State. Non-Federal funds must be equal to at least 40 percent of the costs of each State program. This requirement will ensure adequate State financial involvement while providing necessary Federal financial assistance.

The Administrator is to determine the apportionment of funds among the States according to the needs of the States reflected in reports on the extent of nonpoint pollution problems and the quality and promptness of State programs to control nonpoint sources.

The legislation provides financial incentives to States to implement programs that address particularly difficult nonpoint source pollution problems. In such cases, the environmental benefits from controlling the pollution may be large, but the State may be reluctant to devote a disproportionate amount of its program funds to such problems. The Administrator is expected to use the authorized funds to achieve more effectively the objectives and requirements of this act. Additional funding to States with particularly difficult problems will result in more expeditious implementation schedules and more rapid reduction in nonpoint source pollution loadings.

Interstate nonpoint source pollution problems may be difficult to control because the program costs to control the pollution may accrue mostly in one State while the environmental benefits accrue mostly to another. In such cases, the Administrator may supply additional discretionary grants to the appropriate State, or may provide additional funding to a joint or cooperative interstate program.

In addition, these funds may be used to assess the relationship between nonpoint source pollution and groundwater quality. The conference report includes a provision of the House amendment which authorizes the Administrator to make grants to States with approved nonpoint programs to protect ground water resources from nonpoint sources of contamination.

This bill provides that any funds not obligated in the fiscal year for which they were appropriated shall be reallotted among the States in the following fiscal year.

The new section 319 provides that States may use Federal funds authorized by this bill for financial assistance to persons only insofar as the assistance is related to costs of implementing demonstration projects. These Federal funds are not to be used as a general subsidy or for general cost sharing to support implementation of best management practices by persons. However, a State is not precluded from using or directing other funds for cost sharing or other incentive programs if it so chooses.

The term ”demonstration projects” includes projects designed to educate persons about the application of best management practices and to demonstrate their feasibility and utility as well as research projects to establish the feasibility or cost effectiveness of best management practices.

Initial program grants are required to be awarded to States whose programs are approved by the Administrator. Subsequent grants can only be made if the Administrator determines that the State is satisfactorily implementing its management program consistent with its commitments to schedules and milestones. This annual review and determination is important to assure that States are effectively implementing their programs and that Federal funds obligated under this section are being used to achieve the goals and requirements of the Clean Water Act.

The conference report authorizes 4 years of funding for the nonpoint program: $70 million for fiscal year 1987; $100 million for fiscal year 1988; $100 million for fiscal year 1989; and $130 million for fiscal year 1990. These funds are authorized to be appropriated for grants to the several States pursuant to the provisions of this section and for the payment of salaries and expenses of the Environmental Protection Agency necessary to administer the Agency's obligations under this new section.

Additional funding for the program is provided through set asides of funds that the States would otherwise receive under title II of the Clean Water Act. One percent or $100,000 of the construction grant funds allocated to each State shall be used to develop and implement this new nonpoint pollution program. In addition, nonpoint source control efforts may be financed by the Governor's discretionary set-aside which is 20 percent of the construction grants funds.

The bill requires each State to submit an annual report to the Administrator on its progress in meeting the schedule of milestones in its program and reductions in nonpoint source pollutant loading and improvements in water quality resulting from implementation of the management program.

The Administrator is required to transmit to the Office of Management and Budget and appropriate Federal agencies a list of the assistance programs and development projects which each State has identified for review pursuant to the authority of this bill. Beginning no later than 60 days thereafter each Federal agency is required to amend applicable regulations so that individual assistance applications and projects for the identified programs and development projects are submitted for State review. The appropriate agencies and departments of the Federal Government are required to accommodate, according to the requirements and definitions of Executive Order 12372, as in effect on September 17, 1983, concerns the State may express about consistency of assisted projects or activities with the State's Nonpoint Source Pollution Management Program.

The intent of this provision was explained partially in the comments I made a moment ago with respect to State responsibilities under this new section. Where the earlier subsection authorized the State to identify Federal programs and development projects for review, this subsection establishes the Federal responsibilities in response to such identifications by the States.

The purpose of the State review is to assure consistency of these Federal acitivities with the State's Nonpoint Source Management Program. If the State expresses a concern about consistency, the Federal agency is required to accommodate the Sate's concerns according to the requirements and definitions of Executive Order 12372 as in effect on September 17, 1983. The intent, therefore, is not to invent new procedures for Federal/State coordination, but rather to incorporate existing procedures by reference in the Clean Water Act. This is an important provision because, without adequate State review, Federal activities over which the State has no direct authority

could undercut its program and its water quality goals, possibly jeopardizing the State's ability to meet its program commitments under this section.

It is important that we clarify the meaning of the term ”accommodate” in this context. It is a term of art. It means that any project proposed to be developed by a Federal agency or for which any person is seeking assistance must be in conformance with State views, policies, regulations, and laws. If a State objects to any aspect of a proposed project, then that aspect must be modified to reflect the view communicated by the State. Accommodate means modify to take into account concerns expressed by a State or local government in the review process so as to satisfy and remove those concerns.

The Administrator is to establish an information clearinghouse for information pertaining to the costs and relative efficiencies of best managment practices and the relationship between water quality improvement and the implementation of various practices. The purpose of this provision is to promote information sharing among the States and to provide the basis for technical assistance to State programs.

The Administrator is required not later than January 1, 1990, to submit to Congress a report, based on information submitted by the States and such other information as appropriate, describing the management programs being implemented by the States and their experience in adhering to schedules and implementing best management practices. This report must also describe the amount and purpose of grants awarded under this program; identify the progress made in reducing pollutant loads and improving water quality; and indicate what further actions need to be taken to reduce nonpoint source pollution in the context of the program.

The purpose of this report is to give Congress the information it will need to determine whether the approach taken in this legislation is adequate. This report will document the progress made under this approach and will provide information that will help determine the necessity of future statutory revisions.

Mr. President, this new section 319 represents a first step in controlling pollution from nonpoint sources. We have been persuaded to take a path somewhat different from that taken for point sources. States are given flexibility to identify priorities. And based on commitments made in this legislative cycle, it is the expectation of the Congress that this program will result in a significant improvement in water quality and nationwide reductions in pollutant loadings from nonpoint sources. We will, of course, revisit this question in the next legislative cycle on the Clean Water Act. And we will not find this program adequate, if real improvement in water quality has not been achieved.

The bill requires the Administrator to enter into agreements with the Secretaries of Agriculture, Interior, and Army and the heads of other appropriate departments and agencies to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this act. This amendment would establish the same requirement in terms of management programs developed pursuant to the new section 319. Mr. President, I am especially interested in assuring that EPA and USDA make full use of the authority in this provision. Each year we spend hundreds of millions of dollars through USDA soil and water conservation programs. In the past, these soil conservation efforts have not given sufficient priority to improvements in water quality. It is the expectation of the Congress that this provision will give rise to a memorandum of understanding between EPA and USDA which will significantly elevate the priority assigned to water quality protection in projects assisted by the USDA soil and water conservation programs.

As I said a moment ago, Mr. President, the Administrator is directed to reserve 1 percent of a State allocation under section 205(c) or $100,000, whichever is greater for purposes of carrying out the provisions of this nonpoint program in that State. The State may request the use of any amount of the amount reserved by the Administrator. If the State identifies an amount less than the full reserved amount but greater than $100,000, the State may use remaining reserved funds for other purposes under title II of the act. For example, the State would be able to use the funds for direct grants to municipalities for construction of treatment works. The Administrator

may establish such administrative and procedural requirements as necessary to assure that funds available to States under this section and section 319 are properly coordinated. Further, the Administrator may require a single application for grants under this section and section 319.

Grants under section 205(j)(5) shall meet the Federal and non-Federal cost sharing requirement set forth under section 319. In management of funds under this subsection, however, the Administrator shall not withhold any portion of funds to support special programs.

These funds are intended to be a supplement to the funds authorized by section 319, not to replace them. It is essential that adequate section 319 funds be appropriated in order to assure the development of a strong foundation of nonpoint management plans. In the event section 319 funds are not appropriated, the funds reserved under this subsection will permit modest nonpoint programs to be developed. However, the funds made available by this provision alone are too meager to support the level of program development that is needed to effectively and adequately manage nonpoint source pollution.

Mr. President, finally, let me say that this new program to control nonpoint pollution is an addition to the Clean Water Act and not a substitute for the point source programs already in place under the act. As a nation we have made great progress in reducing the pollution of our surface waters. Much of the work that remains to be done is on the nonpoint side. And we begin that work here. But this is not an excuse to reduce the effort or relax the requirements on the point source side. Reductions in pollution already achieved through point source controls are to be maintained. Point sources not yet in compliance with the law are to be pursued. And on top of that effort we now have a nonpoint program that will bring us much closer to the goal of the Clean Water Act-to eliminate the discharge of pollutants into the Nation's waters.

STORM WATER RUNOFF

Runoff from municipal separate storm sewers and industrial sites contains significant volumes of both toxic and conventional pollutants. EPA's national urban runoff study found 63 toxic pollutants, including 13 toxic metals, in the discharge from municipal separate storm sewers that were studied. Of these, lead, copper, and zinc were the most pervasive; EPA found these pollutants in at least 91 percent of its samples. The same study also estimated that municipal separate storm sewers discharge 10 times the total suspended solids that the Nation's secondary sewage treatment plants discharge.

Toxic and conventional storm water contaminants may adversely affect public health, harm fish and other aquatic life, and prevent or retard water quality improvements even when the best available pollution controls are installed on other point sources.

The Federal Water Pollution Control Act of 1972 required all point sources, including storm water discharges, to apply for NPDES permits within 180 days of enactment. **Despite** this **clear directive**, EPA has failed to require most storm water point sources to apply for permits which would control the pollutants in their discharge.

The conference bill therefore includes provisions which address industrial, municipal, and other storm water point sources. I participated in the development of this provision because I believe that it is critical for the Environmental Protection Agency to begin addressing this serious enviornmental problem.

The bill establishes priorities, deadlines, and permit requirements for storm water point sources. It affords municipal and nonindustrial dischargers some relief from the 1972 permit application requirements.

With respect to municipal separate storm sewers, the bill establishes three permitting priorities: First, those systems serving a population of 250,000 or more; second, those which contribute pollutants to a stream segment which does not attain or maintain a water quality standard; and third, those which are a significant contributor of pollutants to any waters of the United States. If a municipal separate storm sewer or storm sewer system meets any of these criteria, EPA or the State, where the State administers the NPDES Permit Program, must require the

source to apply for a permit within 3 years of enactment of these 1987 amendments. EPA or the State should use any available water quality or sampling data to determine whether the latter two criteria are met, and should require additional sampling as necessary to make these determinations.

If a source is required to obtain a permit, EPA or the State must also act to issue or deny the permit application within 1 year of the application deadline. If no permit application is submitted by the deadline, or if the submitted application is denied, EPA or the State must commence immediate enforcement action against the owner of the sewer system.

A permit for a municipal separate storm sewer may, where appropriate, be issued on a systemwide or jurisdictionwide basis. In writing any permit for a municipal separate storm sewer, EPA or the State should pay particular attention to the nature and uses of the drainage area and the location of any industrial facility, open dump, landfill, or hazardous waste treatment, storage, or disposal facility which may contribute pollutants to the discharge. Storm water permits shall include requirements to effectively prohibit non-storm water discharges to municipal separate storm sewers. Non-storm-water discharges to municipal separate storm sewers are illegal under current law.

Permits issued under this section will provide for compliance as expeditiously as practicable, but in no event later than 3 years from the date the permit is issued and shall require controls to reduce the discharge of pollutants to the maximum extent practicable. Such controls include management practices, control techniques and systems, design and engineering methods, and such other provisions, as the Administrator determines appropriate for the control of pollutants in the storm water discharge.

Within 4 years of enactment or earlier if the water quality data warrants, EPA will commence a control program for storm sewer systems servicing communities with a population between 100,000 and 250,000. This schedule reflects the continuing need to control storm water runoff, but gives EPA flexibility, in the first 4 years after enactment, to order its permitting priorities around those sources which are believed to be the most significant. However, it should be clear that all storm sewer systems including those serving populations of 100,000 or less must be covered by the first round of permits where they contribute to water quality problems or contribute significantly to pollution of the waters of the United States.

After October 1, 1992, all remaining, unpermitted storm water point sources will return to current law status and will be required to obtain permits under section 402 of the Clean Water Act. Obviously, Congress will be taking another look at this whole question before that date and will be informed by the experience with storm water controls which have been established for larger communities under the provisions we adopt here.

EPA and the States should provide adequate opportunity for public participation in the development of any permit for a storm water point source.

The bill also requires EPA to submit to Congress a study of any storm water discharge or class of discharges which are not required to obtain a permit within the first 6 years of enactment. This study is to determine the nature and extent of pollutants in such discharges and procedures and methods to control such discharges. This study will enable Congress to determine whether permitting of the remaining storm water point sources should be expedited beyond the schedule provided in this bill.

GREAT LAKES

Mr. President, the Great Lakes are the heart of our continent. Over the last 200 years they have been the focal point for development of two great nations. They have been the source of food and drinking water. They are a mode of transportation. They are a reservoir of power and a vast resource for recreation and wildlife; 63 million Americans visit a park on the shores of the lakes each year.

All of these demands have taken their toll. The water quality of the Great Lakes has declined sharply. Unfortu-

nately, the natural unity of the lakes has been overlaid by a fragmentation of State and local governments that have been unable to work together to effectively to protect what nature has provided.

In 1972 and again in 1978, the United States and Canada signed Great Lakes water quality agreements. These agreements provided that both nations would install adequate wastewater treatment facilities for the sewered population on each side of the border. Canada has met this requirement for 99 percent of its population. At last count, the United States was less than two-thirds of the way to this goal.

In 1982 the General Accounting Office published a report on U.S. compliance with other aspects of the Great Lakes Water Quality Agreement. The report concluded that the United States is failing to meet its commitments, especially with respect to toxic chemicals and nonpoint source pollution. This is due in part to the absence of a comprehensive U.S. strategy to implement the Great Lakes Water Quality Agreement. We hope to correct that failing with the new Great Lakes Water Quality Program which is authorized by this bill.

Mr. President, this legislation contains at section 404 a new program to restore and maintain the quality of the waters in the Great Lakes. This program owes much to the work of the Senator from Wisconsin <Mr. KASTEN>, and was sponsored in committee by the Senator from New York <Mr. MOYNIHAN> and myself. Representative NOWAK, the new chairman of the Water Resources Subcommittee in the House, also played a major role in crafting this provision.

The objective of this new provision of the Clean Water Act is to achieve the goals embodied in the Great Lakes Water Quality Agreement of 1978. The legislation establishes the Great Lakes National Program Office within the Environmental Protection Agency and specifies the duties and responsibilities of the program office.

The program office is to develop and implement action plans to carry out the duties of the United States under the Great Lakes Water Quality Agreement of 1978; establish a systemwide surveillance network; coordinate the activities of the Environmental Protection Agency with respect to the Great Lakes; and to work with other Federal agencies to achieve the objectives of the 1978 agreement.

The program office will develop a 5-year plan for reducing the amount of nutrients that enter the Great Lakes and will incorporate in that plan management programs for nonpoint sources of pollution developed pursuant to the new section 319 of this the Clean Water Act.

The program office is to conduct a 5-year study of methods to remove toxic pollutants from the Great Lakes with emphasis on the removal of toxic pollutants from bottom sediments. Certain demonstration projects at specific sites are mentioned in the legislation. These projects are to be given high priority, but the Administrator is authorized to sponsor other projects and this section is not a guarantee that those projects named in the bill will be funded.

The annual budget submission of the Environmental Protection Agency to the Congress is to include a line item for the Great Lakes Program Office. At the end of each fiscal year the Administrator is to submit to the Congress a comprehensive report on the achievements of the program office during the preceding fiscal year.

The conference substitute establishes a Great Lakes Research Office in the National Oceanic and Atmospheric Administration. The research office is to identify issues with respect to Great Lakes water quality on which research is needed and is to compile an inventory of ongoing research on those questions. The research office is to develop a comprehensive data base for the Great Lakes system and may conduct research and monitoring activities itself.

For each fiscal year the program office and the research office are to prepare a joint research program. The head of each Federal department, agency, or instrumentality which is engaged in programs or activities which may have an impact on the water quality of the Great Lakes will submit an annual report to the Administrator of the Environmental Protection Agency with respect to those activities and their effect on compliance with the Great Lakes Water Quality Agreement of 1978.

The conference substitute provides an authorization to the Administrator of the Environmental Protection

Agency of $11,000,000 for each of the fiscal years 1987 through 1991 to carry out the provisions of this section. Of the amounts appropriated, 40 percent is to be used by the program office to demonstrate the control and removal of toxic pollutants; 7 percent is to be used for nutrient monitoring; and 30 percent is to be transferred to the research office for its programs. As discussed on the floor of the House when this bill was considered there, these funds are in addition to the resources already committed to the Great Lakes program and are to carry out the new activities which are authorizing.

Mr. BAUCUS. Mr. President, section 506 of the Senate bill I would allow Indian tribes under certain circumstances to be treated as States. The Administrator is required to promulgate regulations which specify how Indian tribes shall be treated as States for purposes of this act. In promulgating these regulations, the Administrator is to consider the effects of differing water quality permit requirements on upstream and downstream dischargers, economic impacts, and present and historical uses and quality of the water subject to such standards.

Throughout Montana and much of the West, many Indian reservations are home to both Indians and non-Indians. Ranching, with its dependence on scarce water supplies, has led to an intertwining of both Indian and nonIndian water users. In one instance, a stream will originate on an Indian reservation and flow off the reservation on to either land within a State or land on an adjacent reservation.

Longstanding patterns of water user have evolved in the West. How will this provision affect these existing water rights?

Mr. BURDICK. It is not in any way to be construed as an impediment or a restriction on existing water rights or laws, either that of the various States or that of individual citizens.

Nothing in this act shall affect or interfere with any existing water quantities rights, their specific elements, uses, or methods of acquisition, whether within or without the borders of any Indian reservation or any state.

Private lands and water rights owners within boundaries of Indian reservations are not to be additionally affected by this act.

Those water quality standards set by Indian tribes and accepted by EPA will not be used off reservation borders.

Mr. MITCHELL. As the floor manager for the bill, I would like to reiterate that the interpretation of Mr. BURDICK is correct.

Mr. BAUCUS. I thank Mr. BURDICK and Mr. MITCHELL for their response.

Mr. ADAMS. I would like to ask the distinguished manager of the Clean Water Act to help me clarify an issue of concern to some of my constituents. Concerns have been raised that the Indian provisions of the Clean Water Act might alter the existing balance of water rights between Indians and non-Indians. My colleagues in the House, Representatives MORRISON and FOLEY, raised this issue with Representative UDALL, the distinguished Chairman of the House Interior and Insular Affairs Committee. Their concerns were addressed by a memorandum written to Representative UDALL that included the following conclusion:

Enactment of H.R. 1, with the Indian provisions will not expand or diminish any water rights Indian tribes may have nor will it expand or diminish any liability the United States, States, or third parties may have for impairing those rights.

I ask unanimous consent to have the memorandum in its entirety printed in the RECORD, and ask the manager of the bill what his sense is of how this bill affects the question of Indian water rights.

Senator BURDICK. I thank Senator ADAMS for giving me the opportunity to clarify this point. I appreciate the sensitivity of water rights questions throughout the Western United States. This bill does not alter the current state of the law on questions of the relative water rights between Indians and non-Indians. It maintains the status quo. Its intent is to provide clean water for the people of this Nation, and it is not in any way to be construed as an impediment or a restriction on existing water rights or laws.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

MEMORANDUM

To: Morris K. Udall, chairman, Committee on Interior and Insular Affairs.

From: Ducheneaux/Broken Rope.

Subject: Indian provisions of the clean water bill.

You have directed us to address the objections raised by constituents of Mr. Foley and Mr. Morrison to the Indian provisions, of H.R. 1, legislation to amend the Clean Water Act. As you know, you strongly supported the inclusion of those provisions in the bill passed and vetoed by the President in the 99th Congress.

It appears that the objections being raised to the Indian provisions assert that these provisions either-

(1) expand the substance of existing Indian water rights;

(2) expand the mechanism available to Indian tribes to enforce those rights both within and without their reservation boundaries; or

(3) both.

CLEAN WATER ACT

I. Substance of Indian water rights

There is nothing in the existing law nor in the proposed amendments in H.R. 1 which in anyway expands the substantive rights of an Indian tribe to a quantity of quality of water. In fact, section 101 (g) of the existing law which is specifically made applicable to Indian tribes by the proposed Indian provisions of H.R. 1, specifically preserves the allocation or qualification of water rights which are otherwise legal under state law.

In like manner, there is nothing in the existing law or in the proposed amendments which impairs or is intended to impair any way existing substantive water rights of any Indian tribe.

Many Indian tribes have certain water rights deriving from treaties or other Federal law wholly apart from the Clean Water Act. These rights, often undetermined, include rights to certain quantities of water and rights to a certain quality of water, it is beyond question that Indian water rights include a right to some quantity of water.

There seems to be some doubt that this right extends to a right to a certain quality of water and the case law on this is somewhat sparse.

However, in the 1980 decision of the Federal district court in U.S. v. Washington, 508 F. Supp. 187, this very issue was addressed. The tribes asserted that their treaty fishing right included the right to environmental protection.

"... It is well established that the scope of an impliedly-reserved right may not be broader than the minimal need which gives rise to the implied right ... Thus, the scope of the State's environmental duty must be ascertained by examining the treaty secured fishing right rather than by selecting a desirable standard that has been imposed by Congress in a different context.... The treaties reserve to the tribes a sufficient quantity of fish to satisfy their moderate living needs. ... That is the minimal need which gives rise to an implied right to environmental protection of the fish habitat. Therefore, the correlative duty imposed upon the State (as well as the United States and third parties) is to refrain from degrading the fish habitat to an extent that would deprive the tribes of their moderate living needs."

While the Circuit Court subsequently vacated the lower court's summary judgment on the environmental issue and remanded the case, it did so solely on the grounds of the proof necessary to show that the State had violated the tribes' fishing right through environmental degradation.

See also U.S. v. Anderson (1979), where the federal court held that the reserved water right included a minimum stream flow to preserve native trout. It also addressed a water quality issue, holding that this right required that the water temperature be maintained at 68 degrees F. or less for fishing purposes.

As noted, these water rights, whether asserted as to quantity or quality or both, exist separate and apart from the Clean Water Act. Either the tribes or the United States or both can have recourse to the Federal courts to enforce those rights.

Enactment of H.R. 1, with the Indian provisions will not expand or diminish any water rights Indian tribes may have nor will it expand or diminish any liability the United States, states, or third parties may have for impairing those rights.

II. Enforcement conflict resolution mechanisms.

There seems to be a concern that enactment of H.R. 1 with the Indian provisions will somehow expand or strengthen the power of an Indian tribe to act to protect its water rights, whether as to quantity or quality. That is not accurate.

A. Indian tribes are self-governing, exercising limited powers of inherent sovereignty within their reservations.

B. In the exercise of that power, Indian tribes have the right to regulate lands and other natural resources within the reservation, including non-Indian owned fee lands or resources.

C. States have no power to assert its laws within an Indian reservation to regulate lands or other resources unless Congress has specifically so provided. In fact, in Washington v. EPA, the Circuit Court upheld a decision of EPA denying the State environmental regulatory jurisdiction under the Resource Conservation and Recovery Act, over Indian lands. The court said, ”States are generally precluded from exercising jurisdiction over Indian Country unless Congress has clearly expressed an intention to permit it.”.

D. Conversely, Indian tribes, except in extremely limited cases, have no power to project their regulatory authority beyond the boundaries of the reservations.

E. The Clean Water Act establishes Federal standards for water quality. States are empowered to assume primacy for water quality regulation within the state by developing and having approved by EPA a Plan establishing State water quality standards which are which ar no less stringent than those adopted by EPA. States may then issue State permits permitting certain water pollution activities which meet that State's water quality standards.

F. Where two or more states, sharing a common water body, have plans approved by EPA with differing standards of water quality, the Act does provide mechanisms for resolving inter-state conflicts. However, there is nothing in the existing Act or in the proposed amendments which gives EPA the power to force one state to changes its approved water quality standards or those valid activities done in accordance with its plan in order to accommodate the water quality needs of another state or states. The aggrieved state or states might have recourse against the offending state through litigation under other applicable law.

G. Recognizing the existing right of Indian tribes to regulate their environment within their reservation boundaries, the Indian provisions in H.R. 1 would permit those Indian tribes who have met certain exacting standards, to assume primacy for water quality regulation within their reservations. The provisions provide that tribes for limited purposes of the Act, would be treated as a State.

H. The Indian provisions of H.R. 1 require the Administrator of EPA to promulgate regulations to specify how Indian tribes will be treated as States for purposes of the Act. In doing so, he is required to consult with affected States charging common water bodies with tribes and to provide a mechanism for the resolution of unreasonable consequences that may arise as a result of differing water quality standards that may be set by States and tribes. However, just as in inter-state conflicts, nothing in that requirement, in the existing Clean Water Act, or in any other provision of H.R. 1 gives the EPA administrator or the tribes the power to force States to alter their approved water quality standards or their operations under an approved Plan in order to accommodate higher tribal

water quality standards. Nor is there anything in the existing law or proposed amendments which would permit Indian tribes to project their internal regulations beyond the boundaries of their reservation.

We can find nothing in the Clean Water Act, as proposed to be amended by H.R. 1 which would in any way expand substantive Indian water rights or which would expand or enhance the power of Indian tribes to affect off-reservation activity which might degrade or despoil on-reservation water quality

January 7, 1987

Mr. LAUTENBERG. Mr. President, I rise in strong support of H.R. 1, the Clean Water Act Amendments of 1987. This same legislation was unanimously adopted by both the House and Senate at the close of the last Congress. We knew then and we know now that this bill is a significant step forward in protecting this Nation's waterways, and deserves our support.

With its construction grants components, its Nonpoint Source Pollution Program, its tightening of toxic discharge controls, and storm water permitting program, this legislation will do much to address major environmental challenges.

Unfortunately, President Reagan pocket-vetoed this legislation. The administration asserted that the bill's authorization for construction grants was excessive. But this claim does not take account of the high costs of sewage treatment construction. It has been estimated that $109 billion is needed to finance such construction throughout the Nation, including $4.5 billion in my State of New Jersey.

Compared to these large needs, the bill before us is no budget buster. It is a rational downpayment on a major national problem. This legislation spreads $18 billion over 9 years for its Construction Grants Program. This sum is gradually allocated. And almost half of it-$8.4 billion-is targeted for State revolving loan funds. Such State loan funds will help create a self-sustaining source of money for States to finance local construction.

A strong construction grants program is essential for economic development across this Nation. If we do not have the sewage treatment facilities to handle the wastes resulting from economic development, we cannot move aggressively forward with such development.

Mr. President, the costs of not enacting this legislation-the harm to our environment, the burdens on our States and localities, and the damage to economic development-far exceed those of this measure.

Mr. President, some are arguing today that the administration substitute bill (S. 76) should be adopted instead of H.R. 1. But S. 76 is no substitute for a strong clean water bill.

The administration's bill would steal from this Nation the opportunity to make real progress in cleaning up our waterways. The substitute reduces by $6 billion the funding for communities' sewage treatment, including over a $200 million reduction in funds for my State. It also abolishes the mandate for establishing revolving loans, the component designed to allow our States independently to fund projects. And it limits States discretion in using funds for revolving loans.

The substitute eliminates the authorization and strength of the Nonpoint Pollution Control Program. S. 76 specifically removes the $400 million authorization of H.R. 1, and makes many of its important requirements, such as State nonpoint pollution assessments, simply optional.

Mr. President, the administration bill is a classic example of being ”Penny wise and pound foolish.” It is a haphazard and simplistic approach to a complex problem. It ignores the hard work and careful consideration this Congress has given to H.R. 1. and I urge my colleagues to oppose it.

The time for debate is over. We have the bill to do the job. Let's pass H.R. 1, and get on with the task of protecting and cleaning up this Nation's waterways.

Mr. President, it is clear that this is a nation committed to the principles embodied in this measure. In the early 1970's, the people of this country made a fundamental decision that they wanted a concerted effort to clean up the Nation's waters-waters that are used for fishing, swimming, recreation, and drinking water.

This decision was made because of our growing awareness of and concern about water pollution. News ac-

counts told us about Lake Erie being dead, the polluted Cuyahoga River in Ohio so filled with oil and debris that it caught fires, millions of gallons of raw wastewaters being dumped into the country's major rivers, such as the Hudson River, and many fish kills and oil spills.

The Congress responded by passing the Federal Water Pollution Control Act Amendments of 1972. This act established a goal-to restore and maintain the integrity of the Nation's waters-which captured the essence of the Nation's desire for clean water.

During the 13 years this act has been implemented, impressive strides have been made in cleaning up our Nation's waters. But much remains to be done. The Clean Water Act Amendments of 1987 include a number of provisions which address problems which are preventing us from achieving the goal of the Clean Water Act.

Also of great importance is future funding for the Construction Grants Program. Since passage of the Clean Water Act in 1972, Federal, State, and local sources have invested more than $56 billion in municipal wastewater treatment facilities resulting in the construction or improvement of approximately 3,500 treatment facilities. Properly running sewage treatment facilities are an essential component for cleaning up the Nation's waters. For example, sewage treatment plants in 1983 were removing 65 percent more of the two principle conventional pollutants-suspended solids and biological oxygen demand-than they were a decade earlier.

Yet it is clear that the existing Construction Grants Program is inadequate to meet remaining national needs. According to EPA, eligible construction needs through the year 2000 total $53 billion. Ineligible needs, those needs not eligible for Federal funding under the Clean Water Act, are more than $50 billion. According to estimates, New Jersey alone has $4.5 billion in eligible funding needs. New Jersey only receives approximately $100 million per year in existing Federal construction grant funding. Therefore it is imperative that we implement a new method of financing sewage facilities. A creative framework, which had its origins in New Jersey, is the concept of revolving loans.

The Clean Water Act Amendments of 1987 adopted this concept and will move us closer to the goal of providing an adequate source of stable funding for sewage treatment facilities. H.R. 1 would authorize $18 billion over 9 years for Federal sewer construction grants and loans. Under the bill, the Federal Government will gradually reduce categorical grants for sewage treatment facilities as it phases in a program of grants for States to capitalize State revolving loan funds.

These funds will provide the capital for municipal wastewater treatment facilities in the future. States can make low or no interest loans available to communities for construction of treatment facilities. As loans are repaid to the State revolving loan funds, the funds will be able to loan money to additional communities.

In addition, Mr. President, this bill will help spur the construction of needed sewerage facilities. In the case of municipalities which proceed to begin construction with their own funds, refinancing is permitted from a State revolving loan fund. Presently, most municipalities wait until it is their turn to receive Federal construction grant funding before they begin constructing needed facilities. This refinancing feature of the Revolving Loan Program would eliminate the disincentive for municipalities to move ahead quickly with construction that now exists with the grants program.

Municipalities are facing a 1988 deadline for installing sewage treatment facilities which provide secondary treatment. EPA has threatened to restrict development in municipalities which are not in compliance with the 1988 deadline. New Jersey imposed sewer bans in many municipalities and has warned others that they face such bans if the discharge from their sewage plants will not comply with requirements of the Clean Water Act. The reimbursement provisions in the conference report to S. 1128 should stimulate cities to meet the 1988 deadline.

Under the bill, States will have to enact legislation to give a legal entity of the State the powers prescribed in the act. During consideration of this legislation during the last Congress, the Environmental Pollution Subcommittee agreed that this legal entity can be an existing or new State entity or agency. When the States enact legis-

lation to implement State revolving loan funds, they will have the flexibility to determine how the fund will operate subject to the requirements of this provision of the Clean Water Act.

For example, States would be able to establish loan terms based on the financial needs of municipalities with easier loan terms available to poorer municipalities. States can decide to initiate their loan funds prior to fiscal year 1989, the year they are required to do so. When States enact revolving loan legislation, they can determine whether to begin using their construction grant funds to capitalize their revolving loan funds prior to fiscal year 1989 and if so, under what terms.

Mr. President, I believe that the revolving loan concept contained in the bill will provide a stable source of funding for the construction of sewerage facilities while providing States with the flexibility to minimize the financial burden of these facilities on local municipalities.

The Clean Water Act amendments only slightly revised the allocation formula for construction grants. I would have preferred the Senate approach during the last Congress, which would have provided New Jersey with $15 million more in grant funds. But New Jersey stands to receive approximately the same amount it has been receiving-up to about $100 million this year-in such funds under H.R. 1. And the State will receive about $650 million over the life of the bill.

H.R. 1 also includes the Raw Sewage Abatement Act of 1985. This legislation which I sponsored, limits the discharge of raw sewage by New York City. At the time I introduced this legislation, New York City was the only major municipality in the country which still discharged raw sewage and wastewater into surrounding waters, without preliminary treatment of its wastes. It did so because of the absence of sewage treatment facilities in two major drainage areas in New York City. Two court ordered deadlines to cease this practice were disregarded by the city.

The provision that I sponsored imposed a cap on raw sewage discharges from the drainage areas in New York City which were without treatment plants, if the city failed to meet the deadlines for achieving advanced preliminary treatment contained in its current consent decree. If these deadlines were met, the cap would be unnecessary because all raw sewage discharges will cease. If the city failed to meet these deadlines, a cap was to be imposed in the drainage area in violation of the decree. It was to stay in effect until the city brought the affected plant online and it operated successfully for 6 months.

The imposition of a cap on raw sewage discharges upon a violation of the consent decree, in effect, said to the city of New York, ”You cannot continue to grow without restraint if you cannot treat your wastes”.

Upon violation of the cap, the city would be subject to the enforcement provisions in section 309 of the Clean Water Act. These penalties would be in addition to those provided for violation of the consent decree. They include tough civil and criminal penalties, and would enable EPA to seek a temporary or permanent injunction against the city, to bring civil actions against the city and to initiate criminal prosecution in cases of negligence or falsification of records.

With the changes adopted in the conference report, to section 309 of the Clean Water Act, a violation of the cap imposed by this amendment could result in substantial penalties of up to $50,000 a day. A violation stemming from a criminal conviction could lead to imprisonment.

Finally, Mr. President, the legislation states that it is the sense of the Congress that EPA should not extend the deadlines in the city's existing consent decree any further.

I am pleased to note that following my amendment, New York City finally began to comply with court-ordered schedules for construction of its North River and Red Hook sewage facilities. North River is currently on schedule to attain secondary treatment by 1991. Red Hook is on schedule to attain primary treatment by 1989. While Red Hook is on schedule, the fact that it is not operational means that discharge of raw sewage into the East River still continues. This legislation will ensure that New York's facilities stay on present compliance schedules, with no more extensions, and move us toward eliminating the dumping of raw sewage in the water-

ways of New York and New Jersey.

New Jersey has had its share of water quality problems. But treatment plants in northern New Jersey are all achieving primary treatment, and most of the major plants serving northern New Jersey are achieving secondary treatment, or are under construction to do so.

The New Jersey Department of Environmental Protection has imposed numerous sewer hookup bans in a number of New Jersey municipalities to improve compliance with the Clean Water Act. Several communities may finance the upgrading of their sewage treatment plants to secondary treatment without any Federal or State aid. In some cases, the Department of Environmental Protection in New Jersey required private sector parties to contribute to local efforts to upgrade sewage treatment facilities as the price of securing a sewer hookup permit and proceeding with planned development.

Mr. President, New Jersey and New York do not need to grow at each others' expense. Regional growth is good for both States. By the same token, Mr. President, this growth should be accompanied by appropriate environmental protection. It must not come at the expense of the environment. It must not come at the expense of New Jersey's tourist and commercial and recreational fishing industries.

These provisions in H.R. 1 will provide strong incentives for New York City to keep complying with its consent decree and bring its sewage treatment plants online as quickly as possible.

H.R. 1 contains a number of other provisions which will strengthen this Nation's effort to clean up its water. These include:

Establishing a new program for cleaning up toxic ”hot spots”-waters that will not meet water quality goals even after industrial dischargers have installed the best available cleanup technologies required under existing law;

Requiring States to develop plans for combating nonpoint source pollution, such as polluted runoff from city streets and farmland. Conferees agreed on a $400 million authorization to help States implement the plans;

Restricting the use of fundamentally different factor waivers from national discharge standards;

Prohibiting, except in certain narrowly defined circumstances, so-called ” backsliding,” or weakening of cleanup standards when industrial and municipal discharge permits are renewed or reissued;

Establishing a national estuary program to solve pollution problems in interstate estuaries such as Delaware Bay and the Hudson-Raritan Estuary;

Requiring EPA to establish toxic contaminant criteria for sewage sludge use and disposal and to establish a public health and environmental protection basis for these criteria;

Authorizing a total of $85 million for lake water quality activities, including demonstration projects at New Jersey's Deal Lake, Belcher Creek, and Greenwood Lake, as well as $15 million for acid mitigation projects;

Retaining the existing law's requirement that discharge permits be renewed every 5 years. The House bill would have extended the permit term to 10 years for certain discharges.

Mr. President, I believe that enactment of the Clean Water Act Amendments of 1987 represents a positive step in the Nation's effort to clean up its water resources, and I urge that we pass this legislation today.

Mr. MITCHELL. Mr. President, I yield to the Senator from New York <Mr. MOYNIHAN>.

The PRESIDING OFFICER (Mr. WIRTH). The Senator from New York.

Mr. MOYNIHAN. Mr. President, I thank the Senator.

I am happy to join my colleagues and associates in support of H.R. 1, and S. 1, the identical measure which we have introduced on this side.

I want to express particularly the pleasure which we all share that this measure has received strong bipartisan support in the 100th Congress. I wish to pay tribute to the distinguished senior Senator from the State of Vermont, our neighbor, the former chairman of the Committee on Environment and Public Works, Mr. STAFFORD, under whose leadership this legislation was first enacted by the Senate and ultimately by Congress.

The Water Quality Act of 1987 is a successor to the original legislation passed in 1972 which had as its laudable goal the cleanup of the waters of the United States to the point where they would be swimmable and fishable. In the great complexity of legislative language, I think it worth noting that when Congress established a standard, we confined it to terms that were tangible, immediate, and definable-"swimmable and fishable."

We did not want this to be an indefinite program, and it is not. The bill we have before us was the product of a 2-year conference with the House of Representatives. I was a member of this conference and can attest that it was a 2-year effort. Our bill provides that the Constitution Grants Program-which has funded the upgrading of our water treatment plants and thus has enabled remarkable progress in improving water quality-end in 4 years' time. Thereafter, a revolving loan fund will be established that municipalities can use for financing. It will be a self-sustaining arrangement that will not require Federal appropriations. We are talking about an appropriate end to a program begun in 1972, with the goal in sight.

What is this goal? It is the time when our waters are swimmable and fishable.

The year 1972 is not all that long ago, in terms of time. But I wonder if some of our memories of that previous period are not already fading-the period before the enactment of the Clean Water Act.

Senator STAFFORD, the distinguished former chairman of the Environment and Public Works Committee, told a story at the press conference that we held on January 6, the first day of the Congress where a bipartisan group of Senators from the committee assembled to introduce the measure. Senator STAFFORD is a naval person, a yachtsman who has been known to make his way through the Champlain sections of the Erie Canal at Lake Champlain which the sovereign States of New York and Vermont share-even on the coast of Maine. On that occasion last week the Senator noted that there was a time that if you fell into the Potomac River, there really was not much point in swimming back to the surface-there was no cure for that kind of exposure.

In turn, I told of a time when I went to a NATO meeting in Brussels which convened the Committee on Challenges of Modern Society, a committee which still exists. Here was an instance where the United States had brought the environmental issue to Europe, which had equal if not worse problems. In the tradition of American hyperbole-or so it might have seemed, but it happened to be fact-I said to the NATO Conference that the United States could make many claims which no doubt other members present could equal, but I did not think anyone could equal our claim to having a river which had just caught on fire. That river was the Cuyahoga River which flows through Cleveland, which had become so polluted that one night it actually caught fire, requiring the local fire department to extinguish a burning river.

That is a past not too far behind us but one already receding from our memory because we have a program here that worked. Did it require resources? Of course, it required resources. Was it worth it? Of course, it was worth it. One of the sensible transitions we are trying to encourage in the Environment and Public Works Committee is that of cleaning up waste from the past and preventing waste in the future. We have followed that general strategy in the Superfund legislation. With respect to toxic wastes left in the Earth, we are cleaning them up and isolating them so that their harmful effects are neutralized. Simultaneously we want to see an end to the production of toxic waste, which is a product of industrial life and one that can be managed and recycled. We can clean up the problems of the past and not create more problems for the future. We have understood that principle, and that is nowhere better demonstrated than with respect to the Clean Water Act.

We started out not 14 years ago and since then we have quite literally transformed the quality of this country's rivers and lakes. You can swim in the Potomac and you can fish in the Potomac. In any case you do not have to live in mortal fear of falling into the Potomac-and the Cuyahoga River has not caught fire since this legislation was enacted.

Now, what are we asking here? We are asking to bring to an orderly termination a program that began with a fixed goal, a goal which we have not yet attained but which we are certainly approaching. It is a goal which the American people certainly understand and support. We had a difficult lengthy conference with the House be-

cause of issues that are specific to many programs at this time. But in the end and in good time-96 hours before the end of the 99th Congress if I recall correctly, we reached agreement so that in both bodies the bill passed almost unanimously.

Mr. President, a few weeks later I was, as most of us were, back in New York or our respective States involved in the campaign, and I inquired of my Washington office, where was the bill and when was the President going to sign it? It seemed a very proper opportunity for the President to sign this bill and take his share of the credit for it. After all, it cannot become law without his signature, and surely he would want to do that prior to the election.

Then I learned something that was cause for apprehension. I learned that the Speaker had signed the bill and the bill had made its way to the Senate, but it had not yet received the signature of the President pro tempore and therefore had not made its way to the White House. Only when the bill leaves the Congress is it that the 10-day period commences during which a bill must be vetoed if Congress is in session or else it becomes law. Alternately, Congress having adjourned, if no action is taken, it is in effect vetoed by the absence of any action by the President, which we have come to call the pocket veto.

I leaned to my disappointment that something had happened in the Senate, that the bill had not reached the White House until such time that the 10-day period would not expire until after the election.

I took the liberty, Mr. President, of calling a press conference in New York State to discuss this unexplained delay. New York has a very great interest in this legislation; a formidable portion of the raw sewage that is discharged into navigable waters in the United States enters the Port of New York from the Hudson and East Rivers. It is our responsibility to halt this discharge, and we have not yet fulfilled it, but we will in this last phase of the program. Now, I asked at the time, could not the President assure us that he was going to support this measure and sign it before the election? And I offered the gratuitous advice that candidates of his party could take credit for the Clean Water Act after the President signed it, or he could ask them to the White House for a signing ceremony, give them pens, pictures to take home, spots on television, all that paraphernalia of a campaign.

Well, silence came. And then I held yet another press conference to say, ” Look, the silence is ominous. It can only suggest that the President's advisers are saying, Don't sign this bill. Because if he were going to sign it, the clock running as it was, we would have heard quickly back, Don't worry; the bill is going to be signed Monday, Saturday, or whatever. And then in fact I did send a message, whom it reached, I do not know-saying, ”Mr. President, sign the bill. Do not let your advisers do you a disservice. This is a bill that passed unanimously in both Houses of Congress. You can sign it now in a spirit of cooperation or it will come back to you in January in another spirit.”

The election came and went and then, of course, the majority changed in this body so that we could be perhaps just a little more certain of cooperating with the majority in the other body. In any event, this has been a bipartisan effort, led in the previous Congress by the Republican majority.

I issued my last plaintive plea to the White House, to say to the President, ”Why don't you just sign that bill, and avoid starting out the next Congress with this problem?”

Again, advisers prevailed, and here we are today. But we are here in a bipartisan spirit without any measure of vindictiveness. I am a little disappointed that we have to go through this once again, but actually not that much time has expired.

It seems to me, even so, that we should get this matter completed expeditiously. Now we have before us H.R. 1. The House, making a special effort, stayed in session long enough to pass the bill in its first week. That is not the normal pattern of the House, as the distinguished Presiding Officer <Mr. WIRTH> knows. They tend to swear in their new Members and then recess for a period in January. They swore in their new Members and then stayed to pass H.R. 1; a bill with pride of place in that body. I think only the Speaker of the House could decide

which bill should hold the honor of being H.R. 1.

I know that in the Senate, only the majority leader has the personal privilege of assigning the first 10 numbers; and our distinguished majority leader, upon hearing the suggestion, said that the Clean Water Act would be S. 1; the bill with the pride of place in the Senate.

So we have H.R. 1 on our desks. There it is-H.R. 1-identical to the bill adopted in the closing days of the last Congress, and the first bill to appear before us in this Congress. S. 1 is no doubt being printed of this time. It is an identical bill.

Both bodies adopted the Clean Water Act by nearly unanimous vote in the last Congress. If memory serves, in the House it was adopted as near to unanimous as makes no matter-406 to 8. The Senate passed it by 96 to 0, unanimously. I cannot but think it will have the same outcome this year.

With that expectation, I would like to move forward. We are ready. We are in session. We are giving good and fair notice that this is our purpose.

The Committee on Environment and Public Works met Tuesday morning of last week, before the 100th Congress convened to declare that this would be our first order of business. Here we are. So can we not conduct some business? The always loyal and indefatigable Senator from Vermont is on the floor. The distinguished senior Senator from Maine, who is the chairman of the subcommittee with jurisdiction over this matter is present. We are ready.

I understand that the minority leader would like to offer, as a substitute for H.R. 1, the proposal prepared by the Office of Management and Budget, and that is fine. If he wants a vote on that, that is fine. But we want a vote on H.R. 1; we want to get it to the President, and to get the matter over with. There is nothing to be gained from beginning this 100th Congress in a spirit of confrontation. The virtually unanimous approval of the Clean Water Act is a decision Congress has made, and one which the President will surely abide by once he becomes aware of the true measure of support this bill enjoys. I cannot imagine the President was thinking about this in those last days of the campaign. He was campaigning very hard. He has had other matters on his mind since. Here is a chance for the President to get in step with the legislative agenda of the 100th Congress and get a piece of work done; a good, clean piece of work, in the name of clean water. It is doable and, so far as I am concerned, can be done this afternoon. If not this afternoon, why not tomorrow? Then we can get on with the business of this Congress by concluding the unfinished business of the last Congress.

Mr. President, I thank the Chair for its courtesy in this matter, and I thank my friends from Vermont and from Maine.

I see that the distinguished senior Senator from Maryland is on the floor, and wishes to speak to this matter, as anyone with jurisdiction over the Chesapeake Bay would. As someone with jurisdiction over the Hudson River, I share his concern for the quality of our Nation's rivers and estuaries.

I would like to take a moment to express my pleasure in addressing Mr. SARBANES as the senior Senator from Maryland. It is the first occasion I have had to do that. I congratulate him on this honor, and can testify to the excellence which he brings to his new position. I thank him for his patience.

Mr. President, I have a formal statement on the matter which details the specifics with reference to my State in the Clean Water Act. I ask unanimous consent that it be printed in the RECORD at this point.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

STATEMENT OF SENATOR DANIEL PATRICK MOYNIHAN

Mr. President, I rise today to urge quick passage of the Clean Water Act Amendments of 1987, H.R. 1, a priority of the 100th Congress. This legislation, approved unanimously at the close of the 99th Congress, is important to our nation, and to my State of New York. Passage of this legislation has become a bipartisan goal of the

new Congress. We cannot afford to wait any longer to send the funds to the states for their water pollution programs. Therefore we are requesting that our colleagues not offer amendments to the bill which is before us, which is identical to the Conference Report passed by the 99th Congress.

When the President allowed the legislation to expire by reason of the so-called pocket veto on November 6, 1986, he placed in jeopardy 14 years of good, hard work. Congress is acting today to finish the task it began with passage of the original Clean Water Act of 1972-to clean up the nation's waters. The sum of 18 billion dollars authorized by the bill over eight years will enable the states to ameliorate the worst cases of water pollution which threaten our drinking water particularly and our water resources generally. After four years, the construction grants program which funds sewers and treatment plant on a 55% federal, 45% state basis, will be converted into a revolving loan program, which will be self-sustaining. Therefore, this is not another huge federal subsidy with no end in sight; rather, it is a targeted effort which ultimately will be self-perpetuating. As such it leverages federal funds, providing seed money for the states' own revolving loan pools.

CLEAN WATER IN NEW YORK

If this legislation passes, which we have every confidence it will, New York will receive $268 million annually in federal grants through 1990, or nearly $1.1 billion of the $18 billion authorized across the nation. This is the highest annual amount received by any state. (California is the next highest recipient at $173 million annually; New Jersey receives $99 million, and Connecticut $30 million).

Without this legislation, a number of New York treatment facilities will be unable to meet the July 1, 1988 deadline mandated under the Act for secondary treatment. The Office of the Attorney General of New York has already begun to notify municipalities which may not be able to meet their compliance schedules.

I need not remind New Yorkers of our dependence on clean water. The striped bass in the Hudson are too contaminated to be eaten safely. Long Island's aquifer which is the drinking water for three million people is being depleted and polluted. And under New York City's streets old leaky water mains reluctantly disburse water to city residents.

Passage of the Clean Water Act Amendments of 1987 must be the cornerstone of our federal water policy. The 99th Congress passed the Safe Drinking Water Act, which strengthened EPA's capacity to protect and to improve our country's drinking water supplies. The Safe Drinking Water Act contains the Sole Source Aquifer Protection Act, which I first introduced in 1982, designed to protect irreplaceable aquifers and such as the one on Long Island. Together with national groundwater legislation, which I am also introducing in the 100th Congress, these statutes will provide a comprehensive approach to maintaining and improving our water. We cannot afford to wait until these waters are polluted. It is much more expensive to clean up water-particular groundwater-after contamination than to prevent it in the first place.

Mr. President, allow me to review the goals of the Clean Water Act

GOALS OF 1972 CLEAN WATER ACT

The Federal Water Pollution Control Act was enacted in 1972 with an exuberantly optimistic set of goals. By 1983 the Act envisioned clean rivers throughout the Nation; by 1985 it sought to eliminate altogether the discharge of pollutants into our waters.

Two major strategies were embodied in the act to achieve these goals. First, a large Federal grant program was established to help local areas construct sewage treatment plants. According to the Congressional Budget Office, $52 billion (in 1984 dollars) total has been spent by the federal government on this construction grant program since 1972.

Second, the act required that all municipal and industrial wastewater be treated before being discharged into

waterways, to remove pollutants ranging from organic materials, bacteria, and viruses to toxic chemicals and heavy metals.

Under the act's National Pollutant Discharge Elimination System the Environmental Protection Agency established limits on the maximum allowable discharge of specific pollutants from treatment plants and industrial facilities. These limits were based on available detection and control technologies, and took into account the compliance costs to the regulated community. They are written into permits issued to all such discharging facilities.

Significant progress has been made towards cleaning up the nation's waters. According to EPA's 1984 National Water Quality Inventory, many of the most severe pollution problems of the 1960s and 1970s have been abated. Moreover, despite substantial growth in the nation's population, industry, and development, overall water quality remained roughly stable between 1972 and 1982-a major accomplishment. A 1984 study by the Association of State and Interstate Water Pollution Control Administrators found that of 350,000 miles of streams and rivers monitored during this period, water quality improved in 13%, stayed the same in 84%, and declined in only 3%. We have been doing something-several things-right.

The Clean Water Act Amendments of 1987 strengthen and add to our current statutes. I will review briefly the most important provisions in these amendments.

CONSTRUCTION GRANTS FOR SEWAGE TREATMENT PLANTS

H.R. 1 authorizes 18 billion dollars in federal support over eight years for the construction grants program, on a 55% federal, 45% state basis. This program enables construction and upgrading of sewage treatment plants. The goal is to have all sewage treatment plants achieve secondary treatment by 1988 (a process which removes 85% of solid and organic matter). In 1989, the revolving fund plan begins, the goal of which is to convert the states' construction grants program into a self-financing program. Such an approach has worked extremely well in Texas and other states. The governor will have the discretion to apportion grant funds and loan funds in order to meet the particular needs of his or her state. With wise planning, the states should make this transition without any disruption in their current schedules of priority work.

I am pleased that the current allocation formula for construction grants has been left virtually in place. This formula, which is based on the current EPA needs survey, correctly reflects the immediate needs in our urban areas in the Great Lakes and Chesapeake Bay regions. Our older cities place the greatest population pressures on the water systems, which also tend to be the oldest systems. New York receives $268 million annually under this allocation.

NONPOINT SOURCE POLLUTION

This bill provides $400 million to initiate the first national program to control nonpoint source pollution, primarily runoff from agriculture and urban areas. Scientists at EPA have determined that nonpoint source pollution (pollution not from a single pipe or outfall) is a significant contributor to degradation of water quality. This includes runoff contaminated by fertilizers and other chemicals, as well as runoff from city streets which often contains high levels of salts and oils.

As part of this effort, conferees worked diligently with cities and counties as well as with environmental groups to devise a stormwater permit system that would improve water quality without being too costly or too cumbersome for EPA to administer. A recent court decision had ordered EPA to issue permits for virtually all storm sewers, which would have required EPA to issue 50,000 more permits on top of the 65,000 point source permits EPA already issues. This would have diverted EPA personnel efforts from control of toxic contaminants in water to a paper shuffling exercise that would not be result in environmental improvements in most cases. The Conference agreed on a provision which would require permits from industrial discharges to storm sewers, and

from cities over 250,000 in population where those discharges are significant contributors to pollution.

CLEAN LAKES PROGRAM

H.R. 1 provides 85 million dollars for a Clean Lakes program which states can use to clean up silted lakes, and to lime acidified lakes.

ESTUARIES PROGRAM

The bill provides 48 million dollars for an estuary research program, which identifies several estuaries of national importance, including New York and New Jersey Harbor. Under this provision EPA can offer up to 10 million dollars per year on a 50 percent matching basis to states to study and implement cleanup in the New York-New Jersey Harbor area.

BAN ON DUMPING OF SLUDGE IN THE NEW YORK BIGHT

The bill bans as of December 1987 any additional users from dumping sewage sludge in the New York Bight 12 miles off Sandy Hook, N.J. The bill also restricts the use of the site 106 miles off the coast to those currently using the 12 mile site.

FUNDS FOR BOSTON TREATMENT PLANTS

H.R. 1 includes 100 million dollars to fund sewage treatment plants in Boston Harbor, assisting Boston in complying with its court ordered directive to stop dumping sludge in the ocean.

GREAT LAKES OFFICE

The conferees agreed to establish a Great Lakes International Coordination Office within EPA to focus on control of toxic pollutants and achievement of goals in the Great Lakes Water Quality Agreement of 1978. The bill also establishes a Great Lakes Research Office with the National Oceanic and Atmospheric Administration to carry out a comprehensive Great Lakes research program, with special attention to sediment control projects.

The Great Lakes Office program includes a $11 million annual authorization from 1987 to 1991 for a data base for monitoring and clean up of the water quality of the lakes, and for priority cleanups of contaminated sediments in five target areas in the nation, one of which is the Buffalo River in New York.

TOXIC HOTSPOTS

The Clean Water Act Amendments of 1987 establish a new ”toxic hotspot” program which requires EPA and the States to work together to identify toxic hotspots which require special attention and additional controls. EPA has already tentatively identified 34 of these areas which may require more stringent controls than the ”best available technology” standard currently mandated by the Act. Albany, Rochester, and Syracuse were areas in New York listed by EPA for this priority attention. In addition, the International Joint Commission has identified 42 areas of concern for toxic pollutants in the Great Lakes. These include the Buffalo River, Eighteen Mile Creek, Rochester Embayment, Oswego River, Niagara River and St. Lawrence River in New York. EPA will review the IJC's recommendations in augmenting its toxic hotspot program.

All in all, this is a most worthy bill. I join my Chairman, Senator Burdick, Subcommittee Chairman Senator Mitchell, and Colleagues on the Environment and Public Works Committee, and other cosponsors in urging its immediate consideration and passage. I ask that an Appendix listing priority water projects in New York State

be included in the RECORD at this point.

Tabular, graphic, or textual material set at this point is not displayable.

Ms. MIKULSKI. Mr. President, I am very pleased that my first remarks on the floor of the U.S. Senate are on an issue of enormous importance to Maryland and the Nation-the Water Quality Act of 1987.

It is altogether fitting that this important piece of legislation is the first item on the agenda for the 100th Congress. It is with great pleasure that I rise in support of this bill.

I worked very closely on this bill as a Member of the House of Representatives in the 99th Congress. By passing this legislation, we will once again send a strong message to the administration, corporations and citizens alike: That this Congress knows that good environment is good business; and there is no conflict between the two.

What does this bill do? It does a number of important things for America and for the State of Maryland. Of particular interest to the State of Maryland is its significant impact on the cleanup of the Chesapeake Bay.

Mr. President, we in Maryland are proud of our bay. It is part of our history and our heritage. We have the bluest crabs, the finest oysters, and the best watermen to be found anywhere. That is the legacy we want to pass on to our children and our grandchildren. This legislation will help us do that in Maryland and in every area of this country where important estuaries exist.

This bill will do much more, however, than just clean up the Chesapeake Bay and other estuaries. It will help pay for construction of new sewage treatment plants that our growing communities must have-and it will modernize existing sewer systems which our older towns and communities already have. As a result of this legislation, the State of Maryland will receive $59 million each year for sewage treatment improvements. This is a public investment that is good government and good business. It will lead to rational growth and development and will help communities help themselves.

For the first time, this bill will require States to develop and implement programs to control nonpoint source pollution into our rivers, streams, and bays. Oil and grease runoff from city streets, pesticide runoff from farms, and polluted runoff from new construction sites must be stopped and the States are in the best position to implement controls to do just that.

Scientists confirm that 50 percent of the pollution in the upper areas of the Chesapeake Bay comes from nonpoint pollution, mostly in the form of farm runoff. Earlier this year, we had a great tragedy in Maryland-a very severe drought. While the drought hurt farmers, it helped the cleanup of the Chesapeake Bay by reducing farm runoff. Mr. President, the cleanup of our Nation's estuaries should never have to depend on natural disasters. We must take control of the problem ourselves and correct it. This legislation will do that.

One final point, Mr. President. The Water Quality Act of 1987 also includes provisions for the National Estuary Program. This program is modeled after the Chesapeake Bay Program which unites the effort of Maryland, Virginia, Pennsylvania, and the District of Columbia in cleaning up the Chesapeake Bay. The offices for the Chesapeake Bay Program are located in Annapolis, MD, and receive $3 million a year in funding under this legislation. That is money well spent because it is used to monitor the Federal expenditures used for bay cleanup efforts, making sure that money is spent wisely and effectively. What we have learned in this region about cleaning up the Chesapeake Bay will be of valuable assistance nationwide as other States and regions work to clean up their polluted waters.

By saving a great estuary life in the Chesapeake Bay, we are saving existing jobs and creating new ones-from the watermen out on their skipjacks who bring in the crabs to the waiters who serve them at Phillips restaurant in Baltimore's inner harbor.

But it is more than just restaurant jobs that we save by saving our estuaries; it is the whole gamut of real estate

jobs from salespersons to developers and it is thousands of jobs related to the tourism industry from desk clerks to summer lifeguards. In voting for this legislation, we are voting for a balance between good business and good environment-and that is good government.

This bill will result in public investments that will generate private sector jobs. It will secure to future generations of watermen and the industries they support a livelihood and a way of life. It will save for us all and our children an irreplaceable natural resource otherwise threatened by destruction.

This is not an ill-conceived spending bill. Rather, it is an investment that will help get Maryland and our country ready for the future; an investment that will yield dividends for generations to come.

Unless we want the Chesapeake Bay and other estuaries from Maine to Florida, from New York to California, to become 20th century Sargasso Seas, then we must pass this legislation.

I urge my colleagues to vote yes on the Water Quality Act of 1987 and I thank the leadership of the Senate for bringing this most important bill to a vote so early in this session.

I yield the floor.

Mr. SARBANES. Mr. President, I rise, first, to congratulate my very able and distinguished colleague from Maryland for her very effective floor speech in behalf of the Water Quality Act of 1987. It is her maiden speech on the floor of the U.S. Senate and obviously augurs well for the future, because it was a very well structured, highly effective presentation of the case for this legislation.

My colleague has had a longstanding interest in the clean water issue, particularly as it affects the Nation's greatest estuary, Maryland's Chesapeake Bay.

While as a Congresswoman for 10 years she has represented an urban district, she has been extremely sensitive to the environmental considerations involved in the clean water bill and has recognized that good environment is good business and that there need be no conflict between the two. I think it is a reflection of the longstanding interest she has had in this matter that she should on her first occasion to take the floor of the Senate to speak in such strong and effective terms in support of this legislation. I congratulate her on her first statement to the Members of the Senate, and predict that her effective advocacy is going to have a very strong influence on the thinking of the Members of this body.

Mr. President, I am pleased to join my colleague, Senator MIKULSKI, in strong support of H.R. 1, the Water Quality Act of 1987, to reauthorize and improve the Clean Water Act.

This legislation is identical to S. 1, which I joined in cosponsoring, and it is identical with the legislation which passed both Chambers last fall. It was agreed upon between the two bodies and then was unfortunately pocket vetoed by President Reagan-after the adjournment of the Congress.

Passage of this legislation is one of the highest legislative priorities I set for this session, and is certainly one of the highest priorities for the State of Maryland and for those who use its waterways.

I want to thank Senators BURDICK, STAFFORD, MITCHELL, and CHAFEE and other members of the Environment and Public Works Committee for their leadership in bringing this legislation so expeditiously to the floor of the Senate.

Let me focus on the legislation for a moment from the Maryland point of view because it contains several provisions critical to our continuing efforts to clean up the Nation's largest and most productive estuary, the Chesapeake Bay.

The bill recognizes the critical importance of the bay and authorizes $52 million over a 4-year period for the State-Federal Chesapeake Bay Program.

The bill provides $3 million a year to support the Office of Chesapeake Bay Programs in the Environmental Protection Agency, an office located in Annapolis, MD, and in addition provides $10 million a year in cost-shared grants to the bay area States. It will, therefore, help to ensure the continuation of a multistate program which our former colleague, Senator Mathias, had so much to do in putting into place.

Second, this legislation reauthorizes the municipal sewage treatment construction program, a vital part of any effort to improve the Nation's water quality. While the $13 million a year to which I just referred for the specific Chesapeake Bay Program itself is important, we cannot successfully improve the water quality of the Chesapeake Bay without the sewage treatment construction program.

More than 1,000 sewage treatment plants discharge directly or indirectly into the bay and their effluent represents a substantial part of the total pollutant load to the bay, including approximately 60 percent of the total phosphorous load. Through comprehensive sewage treatment, significant reductions in nutrients and toxic pollution have been achieved since the passage of the Clean Water Act in 1972 but continued progress toward construction and upgrade of sewage facilities throughout the bay watershed is necessary.

The State of Maryland alone needs at least $60 million a year to meet the goals of the Clean Water Act and to reduce nutrients and toxics currently being discharged into the Chesapeake Bay. Under this legislation funds for treatment plants would still be available on a formula basis and would be recycled as States repaid loans under a revolving fund loan program. This will enable the States to move toward financial self-sufficiency for waste water treatment construction.

Third, the bill establishes a very important new program to control nonpoint source pollution such as runoff from farmland and from city streets and authorizes a total of $400 million over 4 years to help States carry out nonpoint pollution control and related ground water protection activities.

Nonpoint source pollution has been identified as a key factor in maintaining water quality. The EPA 7-year Chesapeake Bay study underscored the importance of addressing the nonpoint source pollution problem, and I welcome the program contained in this legislation as a major effort to come to grips with this issue.

In addition, this legislation contains a number of other provisions which will strengthen our efforts to clean up our Nation's waters, including permits for municipal and industrial storm water discharges, provisions to prohibit backsliding; that is, the relaxation of cleanup requirements when a discharge permit is renewed or rewritten and a new program to combat toxic hot spots, waters which will not meet water quality goals even after the best available cleanup technologies required by law have been installed.

Mr. President, I again commend the committee and its leadership for very quick action in bringing this measure to the floor. It should already have been law because with a vote of 96 to 0 in the Senate and 408 to 0 in the House last session, it was obviously sent to the President not only with overwhelming congressional support but unanimous congressional support. Unfortunately, the President chose to pocket veto the legislation. It is, therefore, necessary for us to reenact it.

The measure before us is exactly the measure that was cleared by the last Congress and which had such overwhelming and unanimous support from the membership.

I would hope that the President would see his way clear to signing the legislation this time. If not I very much hope that Congress will enact it into law, the veto of the President notwithstanding.

This is a very important piece of legislation, one of the most significant that will come before this body in the 100th Congress. It addresses a pressing national problem. In addition, it addresses a problem of keen and critical importance to us in the State of Maryland.

I urge its enactment, and I close by again congratulating my colleague from Maryland for her opening speech, which was enormously effective and which obviously was the forerunner of many similar such presentations which I think it will be the privilege of this body to hear in the coming months and years.

Mr. President, I yield the floor.

Mr. MITCHELL. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. BURDICK). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MITCHELL. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Colorado.

Mr. WIRTH. Thank you, Mr. President.

This is an enormously important piece of legislation.

I want to join my fellow Senators in commending the distinguished Senator from Maine and the distinguished Senator from Vermont for their expeditious handling of this very important bill.

From my region of the country, it is no mystery that water is the lifeblood of that whole area. We have spent most of our history talking about how we might store and use water. That era has slowly but surely come to an end and the issue now has become how do we preserve that water and how do we assure that that water is as clean as it can be.

This legislation goes a long way toward helping us with that second great challenge that we face now in the second century of my State's history.

We also are deeply concerned, Mr. President, about the economics of water in the State of Colorado and in my whole region. It is very clear that increasingly our economy is dependent upon recreation, tourism, sports-other very important uses of our water.

And if we do not have clean water, it is going to be extremely difficult for us to maintain not only the health of our economy but the quality of our life.

For those reasons I once again urge my colleagues' expeditious handling and passage of this important legislation and once again commend my colleagues for moving this bill as rapidly as they have.

This bill is essential to protecting the health and safety of American families who rely upon our lakes, rivers, and streams for their drinking water. Toxic water pollutants frequently accumulate in stream sediments and in aquatic life. As a result, these hazardous substances will persist for many years. We must get on with the task of eliminating these discharges from the Nation's waterways now.

Water pollution also threatens the natural environment. Each of us is poorer for the loss of valuable wildlife habitat to the steady effects of water pollution, regardless of whether the source of that pollution is an industry, an urban area, or an abandoned mine. The strengthening amendments in the bill before us today will give EPA and the States the tools they need to protect water quality and to clean up those streams and rivers that are still polluted.

Finally, Mr. President, this bill makes good economic sense for my State. Recreation and tourism is now the second largest industry in Colorado. Last year, nearly 1 million anglers spent a total of nearly 10 million recreation days fishing in Colorado. Colorado's untamed rivers were used by tens of thousands of people for recreational boating and rafting. And snowmaking made it possible for skiers from around the world to ski earlier and longer than they otherwise could have.

The Clean Water Act, which was first enacted in 1972, has achieved many of its purposes. Industrial and municipal pollution have been reduced. As a result, the water quality of many streams has improved, in some cases dramatically. Atlantic salmon are being reintroduced to cold water streams along the northeastern Atlantic coast. Lake Erie and Lake Ontario are reviving. And the majority of lakes and streams in this country support sport fish populations.

But challenges remain. In many parts of the country, including my State of Colorado, there are toxic pollution hotspots that threaten our health and our environment. The Federal and State environmental agencies have understood for some time that some major sources of pollution have been ignored, especially storm water runoff from urban areas, mining sites, and agricultural lands. And many cities still do not have adequate wastewater treatment facilities.

The bill that is before the Senate today will provide Federal and State environmental agencies with the tools they need to significantly reduce the discharge of toxics into the Nation's waterways.

Even in small quantities, pollutants like arsenic, lead, and PCB's threaten human health and environmental quality. In Colorado, the release of toxic chemicals such as these from mining sites is polluting major rivers and killing fish for miles downstream. This bill will strengthen the ability of Colorado officials to clean up these pollution sources. Once we have done that, we can reintroduce trout and other fish to the rivers, while reassuring downstream communities that their drinking water supplies are safe.

This bill also establishes a new Federal-State program to control pollution from diffuse sources such as city streets and open farmland. While the effect of this so-called nonpoint source pollution may not be immediately evident, the pollution accumulates in lakes, reservoirs, and estuaries and causes serious environmental problems. In fact, many experts have said that these nonpoint sources account for nearly half of all water pollution. The bill before us will give the States and the Environmental Protection Agency a mandate to address this serious problem.

H.R. 1, to reauthorize and strenthen the Clean Water Act, will enable Colorado and other Western States to protect their water resources, their environment, and their economies. This is a good bill, Mr. President, and I urge its swift passage.

PROPOSED UNANIMOUS CONSENT REQUEST

The PRESIDING OFFICER (Mr. WIRTH). The Senator from West Virginia.

Mr. BYRD. Mr. President, the distinguished Republican leader and I and others on both sides of the aisle have been discussing a time agreement which will allow for the distinguished Republican leader to call up an amendment equivalent to the bill which presently is on the calendar and is shown as S. 76. The agreement if entered into, will allow the Republican leader to such an amendment properly styled so as to conform to the requirements of its being a substitute amendment or an amendment in the nature of substitute for the House bill.

He would call his amendment up at around 2:30 p.m. today and debate would proceed thereon. If the agreement is entered into, there would be no amendment in order to the Republican leader's amendment. He would have modified it in certain ways which we have already discussed and which we will discuss further in a moment.

He would call up the amendment around 2:30 today. There would be no votes thereon today. The Senate, then, when it has concluded its business today, would go over until Friday. The Senate would come in at noon on Friday, for the purpose of having routine morning business, introduction of bills and resolutions, statements by Senators and so on, with no rollcall votes on Friday, with the Senate then going over until Tuesday next. This would be in conformity with the schedule already announced, Monday being a national holiday.

On Tuesday next, the Senate would come in at 2 o'clock. On that day, we could work out an agreement for the control of time, so that time would be equally divided and controlled on that day, Tuesday afternoon, with no rollcall votes that afternoon, with one exception. If it is necessary in order to get a quorum and we have to have the Sergeant at Arms proceed to help establish a quorum, we might have to have a rollcall vote, but hopefully not.

Then, the Senate, on Wednesday, would proceed at 4 o'clock in the afternoon to vote on the amendment by Mr. DOLE, as modified, without any motion to commit being in order and with a vote to occur on final passage of the House bill, H.R. 1, as amended, if amended-hopefully it will not be amended-but with that vote to occur immediatately without any intervening action. So that, indeed, there would be two rollcall votes back to back beginning at 4 o'clock Wednesday afternoon. Then, immediately following action on H.R. 1, the Senate would take up a concurrent resolution, which would contain the substance of House Concurrent Resolution 24. There would be a short time agreement on that resolution, which would be part of this overall agreement, with no amendments thereto and no motion to recommit.

That is, in broad form, what the agreement would accomplish if it is entered into. I have not proposed the agreement, but I am ready to do so, if no Senators have any questions concerning the general outline of the agreement and what it would accomplish.

Mr. WILSON addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. WILSON. Thank you, Mr. President. If the majority leader would yield for a question, as he has indicated he is prepared to do, I do have a question that I would ask him to entertain.

This morning, I made a speech during morning business indicating my intention to introduce an amendment to the Clean Water Act that would disapprove the proposal by the President for congressional pay raises. I am obviously very much concerned that we have the opportunity to vote on that question within the 30 days after receipt of the President's proposal. I have the amendment to the Clean Water Act that I intended to introduce.

My question, very simply, is that the agreement which the majority leader has just described would, of course, preclude any other amendments than that being offered by the distinguished Republican leader. What assurance do those like me and, I think, Senator THURMOND, who has a similar measure, although it is broader in scope, what assurance do we have that, if we do not seek to amend the Clean Water Act, there will, in fact, be an opportunity for this body to register our disapproval prior to the lapsing of the 30 days?

Mr. BYRD. Mr. President, the distinguished Senator from California has posed a pertinent question. I can understand his concern and I will attempt to provide him with assurance at this point.

I hope that the clean water bill, H.R. 1, will not be amended in any form, so that the bill may go directly to the President for his signature. Therefore, I have to state at the beginning that I am opposed to any amendment to the bill.

The Senator is quite right, if the agreement is entered into, there will be no amendment in order except the amendment by Mr. DOLE.

I can assure the Senator-and without any reservation I will assure him-that if no amendment is offered dealing with the recommended salary increases to the clean water bill, the Senate will have an opportunity to vote on that matter within the 30-day time period.

Anticipating that the Senator or a Senator might want assurance on this point, I discussed earlier this morning with the distinguished chairman of the committee which would have jurisdiction over that subject matter-and I have reference to Mr. GLENN-the fact that I was pursuing a time agreement and that this question might come up; if not the question, an amendment might be offered. Senator GLENN is in agreement with me that there will be a vote and there should be a vote on the subject matter that the Senator has raised. The Senator from California may rest fully assured that the Senate will have the opportunity to address that matter within the time period that is allowed under the law. Therefore, I hope that the Senator will not offer his amendment to this bill.

Mr. WILSON. Mr. President, let me say to the distinguished majority leader that his personal assurance would be quite good enough for me if he is able to include within that assurance that it is possible, given his knowledge of the rules and his skill as a parliamentarian, to overcome any possible objection that some Senator, unbeknownst to him at this present moment, might pose by interjecting the withholding of unanimous consent. Is there a means whereby we can be assured that this question will be put to a vote that does not depend upon unanimous consent?

Mr. BYRD. Mr. President, I can give the Senator assurance that a vehicle can be brought before the Senate without debate on proceeding thereto, and the Senate, therefore, will have an opportunity to address the subject matter and it will be my intention to see that that is done. Senator GLENN was in no position today to say what action his committee will take. He will be discussing that, I am sure, with other members of the committee. The committee may bring out a resolution or it may not. If it does not, and all other efforts fail, we have rule XIV available. And I can assure the Senate that rule XIV will be utilized if it is the last resort.

A motion can be made at the proper time that is not debatable. The Senate then would vote on taking up a resolution which by then will be on the calendar. When the resolution is called up before the Senate it is open to amendment just like any other resolution.

Mr. WILSON. I thank the majority leader. I do appreciate his taking the time to be specific in terms of the options that are available. I think it is important that we understand it as precisely as possible because it is an important question.

Based on the assurance that he has given me-and I know his word is good, and his knowledge of the rules is just as good-I will not, as I had intended, offer this amendment at this time nor will I withhold consent to his proposed request.

Mr. BYRD. May I say in responding to the distinguished Senator that the distinguished Republican leader has already gone into this matter very carefully with me. And this is one of the questions that he raised on behalf of his colleagues on that side of the aisle. I gave the Republican leader the same assurance, and I am confident that he will help me in every way to carry out the promise that I have just committed myself to; namely, that we do get a disapproval resolution on the pay raise recommendations up before the Senate. So my commitment will have been kept.

Mr. WILSON. I thank the majority leader. I appreciate his gracious comments. I thank the Republican leader for his acting as good shepherd on behalf of myself and the other Senators who are interested in this question.

Mr. DOLE. Mr. President, will the distinguished majority leader yield?

Mr. BYRD. Yes. I yield. I yield the floor, Mr. President. I have not yet proposed the request. But I will shortly, after the distinguished Republican leader has yielded the floor.

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, I have listened carefully to the distinguished majority leader. I think his presentation takes care of the discussions we had earlier. It covers, I think, every aspect of it. I am pleased that there will not be other amendments either to the bill or to the substitute. The substitute would be a bit different from what I introduced earlier. I have shown both the distinguished Senator from Maine and the majority leader those changes.

There are four or five projects to be added plus a technical correction that would affect a project in Kansas. I think those are the only changes that are made in the substitute. I would be prepared to offer that substitute I hope by 2:30, no later than 3 o'clock today. I am prepared based on the informal description whenever the majority leader is ready to agree that we ought to get the agreement.

133 Cong. Rec. S733-02, 1987 WL 928615 (Cong.Rec.)

END OF DOCUMENT